

## EAC SUMMARY OF LITERATURE REVIEW FOR VOTING FRAUD-VOTER INTIMIDATION RESEARCH

Milwaukee Police Department, Milwaukee County District Attorney's Office, Federal Bureau of Investigation, United States Attorney's Office "Preliminary Findings of Joint Task Force Investigating Possible Election Fraud," May 10, 2005.

On January 26, 2005, the Milwaukee Police Department, Milwaukee County District Attorney's Office, Federal Bureau of Investigation, and the United States Attorney's Office formed a task force to investigate alleged voting irregularities during the November 2004 elections. The task force has made the following specific determinations based on evidence examined to date:

- **evidence of more than 100 individual instances of suspected double-voting, voting in names of persons who likely did not vote, and/or voting in names believed to be fake.**
- **more than 200 felons voted when they were not eligible to do so. (In order to establish criminal cases, the government must establish willful violations in individual instances);**
- **persons who had been paid to register voters as "deputy registrars" falsely listed approximately 65 names in order to receive compensation for the registrations. (The evidence does not indicate that these particular false registrations were later used to cast votes); and,**
- **the number of votes counted from the City of Milwaukee exceeds the number of persons recorded as voting by more than 4,500. (Evidence indicates widespread record keeping errors with respect to recording the number of voters)**

The investigation concentrated on the 70,000+ same-day registrations. It found that a large majority of the reported errors were the result of data entry errors, such as street address numbers being transposed. However, the investigation also found more than 100 instances where votes were cast in a manner suggesting fraud. These include:

- persons with the same name and date of birth recorded as voting more than once;
- persons who live outside Milwaukee, but who used non-existent City addresses to register and vote in the City (141 of them were same day registrants; in several instances, the voter explicitly listed municipality names other than Milwaukee on the registration cards);
- persons who registered and voted with identities and addresses that cannot in any way be linked to a real person;
- persons listed as voting under a name and identity of a person known to be deceased;
- persons whose identities were used to vote, but who in subsequent interviews told task force investigators that they did not, in fact, vote in the City of Milwaukee.

Investigation also found:

- **persons who were paid money to obtain registrations allegedly falsified approximately 65 names on registration forms, allegedly to obtain more money for each name submitted.**
- **more than 200 felons who were not eligible to vote in the 2004 election, but who are recorded as having done so.**
- **same-day registrations were accepted in which the card had incomplete information that would help establish identity. For example: 48 original cards for persons listed as voting had no name; 548 had no address; 28 did not have signatures; and another 23 cards had illegible information (part of approximately 1,300 same-day registrations for which votes were cast, but which election officials could not authenticate as proper voters within the City).**
- **the post-election misfiling or loss of original green registration cards that were considered duplicates, but that in fact corresponded to additional votes. These cards were used to record votes, but approximately 100 cards of interest to investigators can no longer be located. In addition, other original green registration cards continue to be found.**

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National Commission on Federal Election Reform, "Building Confidence in U.S. Elections," Center for Democracy and Election Management, American University, September 2005.

Among the observations made that are relevant to the EAC study of fraud and intimidation are the following:

- The November 2004 elections showed that irregularities and fraud still occur.
- Failure to provide voters with such basic information as their registration status and their polling site location raises a barrier to voting as significant as inconsistent procedures on provisional ballots or voter ID requirements.
- **There is no evidence of extensive fraud in U.S. elections or of multiple voting, but both occur, and it could affect the outcome of a close election.**
- The Commission is concerned that the different approaches to identification cards might prove to be a serious impediment to voting.
- **Voter registration lists are often inflated by the inclusion of citizens who have moved out of state but remain on the lists.** Moreover, under the National Voter Registration Act, names are often added to the list, but counties and municipalities often do not delete the names of those who moved. Inflated voter lists are also caused by phony registrations and efforts to register individuals who are ineligible. At the same time, inaccurate purges of voter lists have removed citizens who are eligible and are properly registered.
- Political party and nonpartisan voter registration drives generally contribute to the electoral process by generating interest in upcoming elections and expanding participation. However, they are occasionally abused. **There were reports in 2004 that some party activists failed to deliver voter registration forms of citizens who expressed a preference for the opposing party.**
- **Vote by mail raises concerns about privacy**, as citizens voting at home may come under pressure to vote for certain candidates, and it **increases the risk of fraud.**
- **While election fraud is difficult to measure, it occurs.** The U.S. Department of Justice has launched more than 180 investigations into election fraud since October 2002. These investigations have resulted in **charges for multiple voting, providing false information on their felon status, and other offenses** against 89 individuals and in convictions of 52 individuals. The convictions related to a **variety of election fraud offenses, from vote buying to submitting false voter registration information and voting-related offenses by non-citizens.** In addition to the federal investigations, state attorneys general and local prosecutors handle cases of election fraud. **Other cases are never pursued because of the difficulty in obtaining sufficient evidence for prosecution or because of the low priority given to election fraud cases.**
- **Absentee ballots remain the largest source of potential voter fraud**
- **Non-citizens have registered to vote in several recent elections**
- **The growth of "third-party" (unofficial) voter registration drives in recent elections has led to a rise in reports of voter registration fraud.**
- **Many states allow the representatives of candidates or political parties to challenge a person's eligibility to register or vote or to challenge an inaccurate name on a voter roll. This practice of challenges may contribute to ballot integrity, but it can have the effect of intimidating eligible voters, preventing them from casting their ballot, or otherwise disrupting the voting process.**

Its pertinent recommendations for reform are as follows:

- **Interoperable state voter databases** are needed to facilitate updates in the registration of voters who move to another state and to eliminate duplicate registrations, which are a source of potential fraud.
- **Voters should be informed of their right to cast a provisional ballot** if their name does not appear on the voter roll, or if an election official asserts that the individual is not eligible to vote, but **States should take additional and effective steps to inform voters as to the location of their precinct**
- The Commission recommends that states use **"REAL ID" cards for voting purposes.**
- **To verify the identity of voters who cast absentee ballots, the voter's signature on the absentee ballot can be matched with a digitized**

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**version of the signature that the election administrator maintains.** While such signature matches are usually done, they should be done consistently in all cases, so that election officials can verify the identity of every new registrant who casts an absentee ballot.

- Each **state needs to audit its voter registration files** to determine the extent to which they are accurate (with correct and current information on individuals), complete (including all eligible voters), valid (excluding ineligible voters), and secure (with protections against unauthorized use). This can be done by matching voter files with records in other state agency databases in a regular and timely manner, contacting individuals when the matches are inconclusive, and conducting survey research to estimate the number of voters who believe they are registered but who are not in fact listed in the voter files.
- Each **state should oversee political party and nonpartisan voter registration drives** to ensure that they operate effectively, that registration forms are delivered promptly to election officials, that all completed registration forms are delivered to the election officials, and that none are "culled" and omitted according to the registrant's partisan affiliation. Measures should also be adopted to track and hold accountable those who are engaged in submitting fraudulent voter registrations. Such oversight might consist of training activists who conduct voter registration drives and tracking voter registration forms to make sure they are all accounted for. In addition, states should apply a criminal penalty to any activist who deliberately fails to deliver a completed voter registration form.
- **Investigation and prosecution of election fraud should include those acts committed by individuals, including election officials, poll workers, volunteers, challengers or other nonvoters associated with the administration of elections, and not just fraud by voters.**
- **In July of even-numbered years, the U.S. Department of Justice should issue a public report on its investigations of election fraud.** This report should specify the numbers of allegations made, matters investigated, cases prosecuted, and individuals convicted for various crimes. **Each state's attorney general and each local prosecutor should issue a similar report.**
- **The U.S. Department of Justice's Office of Public Integrity should increase its staff to investigate and prosecute election-related fraud.**
- In addition to the penalties set by the Voting Rights Act, it **should be a federal felony for any individual, group of individuals, or organization to engage in any act of violence, property destruction (of more than \$500 value), or threatened act of violence that is intended to deny any individual his or her lawful right to vote or to participate in a federal election.**
- **To deter systemic efforts to deceive or intimidate voters, the Commission recommends federal legislation to prohibit any individual or group from deliberately providing the public with incorrect information about election procedures for the purpose of preventing voters from going to the polls.**
- **States should define clear procedures for challenges, which should mainly be raised and resolved before the deadline for voter registration.** After that, challengers will need to defend their late actions. **On Election Day, they should direct their concerns to poll workers, not to voters directly, and should in no way interfere with the smooth operation of the polling station.**
- **State and local jurisdictions should prohibit a person from handling absentee ballots other than the voter, an acknowledged family member, the U.S. Postal Service or other legitimate shipper, or election officials.** The practice in some states of allowing candidates or party workers to pick up and deliver absentee ballots should be eliminated.
- All states should **consider passing legislation that attempts to minimize the fraud that has resulted from "payment by the piece" to anyone in exchange for their efforts in voter registration, absentee ballot, or signature collection.**
- Nonpartisan structures of election administration are very important, and **election administrators should be neutral, professional, and impartial.**
- No matter what institutions are responsible for conducting elections, **conflict-of-interest standards should be introduced for all federal, state, and local election officials.** Election officials should be prohibited by federal and/or state laws from serving on any political campaign committee, making any public comments in support of a candidate, taking a public position on any ballot measure, soliciting campaign funds, or otherwise campaigning for or against a candidate for public office. A decision by a secretary of state to serve as co-chair of his or her party's presidential

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election committee would clearly violate these standards.

The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law "Response to the Report of the 2005 Commission on Federal Election Reform," September 19, 2005.

### Recommendation on Voter Identification -

- Report premises its burdensome identification proposals on the need to ensure ballot integrity and on the existence of or potential for widespread fraud. However, the **Report admits that there is simply "no evidence" that the type of fraud that could be solved by stricter voter identification** – individual voters who misrepresent their identity at the polls – is a widespread problem.
- The photo ID proposal guards against only one type of fraud: individuals arriving at the polls to vote using false information, such as the name of another registered voter, or a recent but not current address. Since the costs of this form of fraud are extremely high (federal law provides for up to five years' imprisonment), and the benefits to any individual voter are extremely low, it is highly unlikely that this will ever occur with any frequency. **The limited types of fraud that could be prevented by a Real ID requirement are extremely rare and difficult.**
- In the most comprehensive survey of alleged election fraud to date, Professor Loraine Minnite and David Callahan have shown that the **incidence of individual voter fraud at the polls is negligible**. A few prominent examples support their findings. In Ohio, a statewide survey found four instances of ineligible persons voting or attempting to vote in 2002 and 2004, out of 9,078,728 votes cast – a rate of 0.00004%. Earlier this year, Georgia Secretary of State Cathy Cox stated that she could not recall one documented case of voter fraud relating to the impersonation of a registered voter at the polls during her ten-year tenure as Secretary of State or Assistant Secretary of State.
- The Report attempts to support its burdensome identification requirements on four specific examples of purported fraud or potential fraud. **None of the Report's cited examples of fraud stand up under closer scrutiny.** This response report goes through each instance of fraud raised by the Commission report and demonstrates that in each case the allegation in fact turned out later not to be true or the fraud cited was not of the type that would be addressed by a photo identification requirement.
- The Report fails to provide a good reason to create greater hurdles for voters who vote at the polls than for those who vote absentee. Despite the fact that **absentee ballots are more susceptible to fraud than regular ballots**, the Report exempts absentee voters from its proposed Real ID and proof of citizenship requirements.

### Other points in ID requirement:

- **Report does not explain why the goals of improved election integrity will not be met through the existing provisions in the Help America Vote Act of 2002 (HAVA).**
- Report fails to consider alternative measures to advance its goals that are less restrictive to voters. To the extent that any limited fraud **by individuals at the polls does trickle into the system, it can be addressed by far less restrictive alternatives.** The first step is to recognize that only voters who appear on the registration list may vote a regular ballot. Proper cleaning of registration lists – and proper use of the lists at the poll–will therefore go a long way toward ensuring that every single ballot is cast by an eligible voter.
- In addition to the **better registration lists that full implementation will provide, better record keeping and administration at the polls will reduce the limited potential for voting by ineligible persons.** In the unlikely event that implementation of current law is not able to wipe out whatever potential for individual fraud remains, there are several effective and less burdensome alternatives to the Report's Real ID recommendation that received wholly insufficient consideration.
- Costs - If required as a precondition for voting, photo identification would operate as a de facto poll tax that could disenfranchise low-income voters. To alleviate this burden, the Report appropriately recommends that the "Real ID" card itself be issued free of charge. Nevertheless, the

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percentage of Americans without the documentary proof of citizenship necessary to obtain Real IDs is likely to remain high because the requisite documents are both expensive and burdensome to obtain. (Each of the documents an individual is required to show in order to obtain a "Real ID" card or other government-issued photo ID card costs money or presumes a minimal level of economic resources. Unless the federal and all state governments waive the cost of each of these other forms of identification, the indirect costs of photo IDs will be even greater than their direct costs. In addition, since government-issued IDs may only be obtained at specified government offices, which may be far from voters' residences and workplaces, individuals seeking such IDs will have to incur transportation costs and the costs of taking time off from work to visit those offices during often-abbreviated business hours.)

- Since voting generally depends on the voter's address, and since many states will not accept IDs that do not bear an individual's current voting address, an additional 41.5 million Americans each year will have ID that they may not be able to use to vote.
- The burden would fall disproportionately on the elderly, the disabled, students, the poor, and people of color.
- The ID recommendations reduce the benefits of voter registration at disability and other social service agencies provided by the National Voter Registration Act of 1993. Individuals who seek to register at those offices—which generally do not issue IDs Census data demonstrate that African Americans and Latinos are more than three times more likely than whites to register to vote at a public assistance agency, and that whites are more likely than African Americans and Latinos to register when seeking a driver's license. Accordingly, the voter registration procedure far more likely to be used by minorities than by whites will no longer provide Americans with full eligibility to vote.
- The Report's proposal to use Real ID as a condition of voting is so excessive that it would prevent eligible voters from proving their identity with even a valid U.S. passport or a U.S. military photo ID card. The Report's proposal to use Real ID as a condition of voting is so excessive that it would prevent eligible voters from proving their identity with even a valid U.S. passport or a U.S. military photo ID card

**Recommendation on Database Information Sharing Across States -serious efficacy, privacy, and security concerns raised by a nationally distributed database of the magnitude it contemplates.** These problems are exacerbated by the Report's recommendation that an individual's Social Security number be used as the broadly disseminated unique voting identifier.

**Recommendation on Voting Rights of Ex-Felons - This recommendation would set a standard more generous than the policies of the most regressive thirteen states in the nation but more restrictive than the remaining thirty-seven. The trend in the states is toward extension of the franchise.**

Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, "Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?" A Report to the Center for Voting Rights & Protection, September, 2004.

Focuses on **vote suppression through "ballot security programs"** (programs that, in the name of protecting against vote fraud, almost exclusively target heavily black, Latino, or Indian voting precincts and have the intent or effect of discouraging or preventing voters in those precincts from casting a ballot). Noteworthy **characteristics of these programs**:

- **focus on minority precincts almost exclusively**
- **is often on only the flimsiest evidence that vote fraud is likely to be perpetrated in such precincts;**
- **in addition to encouraging the presence of sometimes intimidating white Republican poll watchers or challengers who may slow down voting lines and embarrass potential voters by asking them humiliating questions,** these programs have sometimes posted people in official-looking uniforms with badges and side arms who question voters about their citizenship or their registration
- **warning signs may be posted near the polls, or radio ads may be targeted to minority listeners** containing dire threats of prison terms for people who are not properly registered—messages that seem designed to put minority voters on the defensive.
- **sometimes false information about voting qualifications** is sent to minority voters through the mail."
- **doing mailings, collecting returned materials, and using that as a basis for creating challenger lists** and challenging voters at the polls,

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started in the 1950s and continues to today (problem with this practice is that reasons for a mailing to be returned include a wrong address, out of date or inaccurate addresses, poor mail delivery in minority areas, and matching mistakes)

Provide numerous examples from the last 50 years to demonstrate his thesis, going through the historical development of Republican ballot security programs from the 1950s through to the present (including more recent incidents, such as 1981 in New Jersey, 1982 Dallas, Louisiana 1986, Houston 1986, Hidalgo 1988 Orange County 1988, North Carolina 1990, South Carolina 1980-1990, and South Dakota 2002). Author cites and quotes internal Republican letters and memoranda, primary sources and original documents, media reports, scholarly works, as well as the words of judges' rulings in some of the cases that ended up in litigation to prove his argument. author cites and quotes internal Republican letters and memoranda, primary sources and original documents, media reports, scholarly works, as well as the words of judges' rulings in some of the cases that ended up in litigation to prove his argument.

**Some of the features of vote suppression efforts** put forth by Republicans under the guise of ballot security programs:

1. **An organized, often widely publicized effort to field poll watchers in what Republicans call "heavily Democratic," but what are usually minority, precincts;**
2. **Stated concerns about vote fraud in these precincts, which are occasionally justified but often are not;**
3. **Misinformation and fear campaigns directed at these same precincts, spread by radio, posted signs in the neighborhoods, newspapers, fliers, and phone calls, which are often anonymously perpetrated;**
4. **Posting "official-looking" personnel at polling places, including but not limited to off-duty police—sometimes in uniform, sometimes armed;**
5. **Aggressive face-to-face challenging techniques at the polls that can confuse, humiliate, and intimidate—as well as slow the voting process—in these same minority precincts;**
6. **Challenging voters using inaccurate, unofficial lists of registrants derived from "do-not-forward" letters sent to low-income and minority neighborhoods;**
7. **Photographing, tape recording, or videotaping voters; and**
8. **Employing language and metaphors that trade on stereotypes of minority voters as venal and credulous.**

The report ends with some observations on the state of research on the incidence of fraud, which the author finds lacking. He **suggests that vote suppression of qualified minority voters by officials and partisan poll-watchers, challengers, and uniformed guards should also be considered as included in any definition of election fraud.** Recommends Democrats should not protest all programs aimed at ballot integrity, but rather work with Republicans to find solutions to problems that confront both parties and the system as a whole.

Alec Ewald, "A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law," The Sentencing Project, November 2005.

Presents results from the first nationwide study to document the implementation of American felony disenfranchisement law. Data came from two main sources: a 33-state survey of state elections officials (spring 2004) and telephone interviews with almost one hundred city, county, town, and parish officials drawn from 10 selected states.

### Major Conclusions:

1. **Broad variation and misunderstanding in interpretation and enforcement of voting laws** (more than one-third [37%] of local officials interviewed in ten states either described their state's fundamental eligibility law incorrectly, or stated that they did not know a central aspect of that law. / Local registrars differ in their knowledge of basic eligibility law, often within the same state. Differences also emerge in how they are notified of criminal convictions, what process they use to suspend, cancel, or "purge" voters from the rolls, whether particular documents are required to restore a voter to eligibility, and whether they have information about the criminal background of new arrivals to the state.)
2. **Misdemeanants disenfranchised in at least five states** (the commonly-used term "felon disenfranchisement" is not entirely accurate, since at

least five states – Colorado, Illinois, Michigan, South Carolina, and Maryland -- also formally bar some or all people convicted of misdemeanors from voting [ it is likely that misdemeanants in other states who do retain the formal right to vote could have difficulty exercising that right, given ignorance of their eligibility and the lack of clear rules and procedures for absentee voting by people in jail who have not been convicted of a felony / Maryland excludes persons convicted of many misdemeanors, such as “Unlawful operation of vending machines,” “Misrepresentation of tobacco leaf weight,” and “Racing horse under false name.”)

3. **Significant ambiguities in voting laws (disenfranchisement in Tennessee is dependent on which of five different time periods a felony conviction occurred between 1973 and the present /** in Oregon, disenfranchisement is determined not by conviction or imprisonment for a felony, but for being placed under Department of Corrections supervision / since 1997, some persons convicted of a felony and sentenced to less than 12 months' custody have been sent to county jails and hence, are eligible to vote.
4. **Disenfranchisement results in contradictory policies within states (the “crazy-quilt” pattern of disenfranchisement laws exists even within states /** Alabama and Mississippi have both the most and least restrictive laws in the country, a result which is brought about by the fact that certain felonies result in the loss of voting rights for life, while others at least theoretically permit people in prison to vote / most felonies in Alabama result in permanent disenfranchisement, but drug and DUI offenses have been determined to not involve the “moral turpitude” that triggers the loss of voting rights / in Mississippi, ten felonies result in disenfranchisement, but do not include such common offenses as burglary and drug crimes.
5. **Confusing policies lead to the exclusion of legal voters and the inclusion of illegal voters:** The complexity of state disenfranchisement policies results in frequent misidentification of voter eligibility, largely because officials differ in their knowledge and application of disqualification and restoration law and procedures.
6. **Significant variation and uncertainty in how states respond to persons with a felony conviction from other states:** No state has a systematic mechanism in place to address the immigration of persons with a felony conviction, and there is no consensus among indefinite-disenfranchisement states on whether the disqualification is properly confined to the state of conviction, or should be considered in the new state of residence. Interpretation and enforcement of this part of disenfranchisement law varies not only across state lines, but also from one county to another within states. Local officials have no way of knowing about convictions in other states, and many are unsure what they would do if a would-be voter acknowledged an old conviction. Because there is no prospect of a national voter roll, this situation will continue even after full HAVA implementation.
7. **Disenfranchisement is a time-consuming, expensive practice:** Enforcement requires elections officials to gather records from different agencies and bureaucracies, including state and federal courts, Departments of Corrections, Probation and Parole, the state Board of Elections, the state police, and other counties' elections offices.

#### Policy Implications

1. **Policies disenfranchising people living in the community on probation or parole, or who have completed a sentence are particularly difficult to enforce:** States which disenfranchise only persons who are currently incarcerated appear able to enforce their laws more consistently than those barring non-incarcerated citizens from voting.
2. **Given large-scale misunderstanding of disenfranchisement law, many eligible persons incorrectly believe they cannot vote, or have been misinformed by election officials:** More than one-third of election officials interviewed incorrectly described their state's law on voting eligibility. More than 85% of the officials who misidentified their state's law either did not know the eligibility standard or specified that the law was more restrictive than was actually the case.
3. **Occasional violation of disenfranchisement law by non-incarcerated voters not surprising:** Given the complexity of state laws and the number of state officials who lack an understanding of restoration and disqualification procedures, it should come as no surprise that many voters are ignorant of their voting status, a fact that is likely to have resulted in hundreds of persons with a felony conviction registering and voting illegally in recent years.

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4. Taken together, these findings undermine the most prominent rationale for disenfranchisement: that the policy reflects a strong, clear consensus that persons with a felony conviction are unfit to vote and constitute a threat to the polity: First, when significant numbers of the people who administer elections do not know important aspects of disenfranchisement law, it is hard to conclude that the restriction is necessary to protect social order and the "purity" of the ballot box. Second, because they are all but invisible in the sentencing process, "collateral" sanctions like disenfranchisement simply cannot accomplish the denunciatory, expressive purposes their supporters claim. We now know that disenfranchisement is not entirely "visible" even to the people running American elections. Third, deep uncertainty regarding the voting rights of people with felony convictions who move from one state to another indicates that we do not even know what purpose disenfranchisement is supposed to serve – whether it is meant to be a punishment, or simply a non-penal regulation of the franchise.

### Recommendations

1. **Clarify Policies Regarding Out-of-State Convictions:** State officials should clarify their policies and incorporate into training programs the means by which a felony conviction in another state affects an applicant's voting eligibility. For example, sentence-only disenfranchisement states should clarify that newcomers with old felony convictions from indefinite disenfranchisement states are eligible to vote. And those states which bar some people from voting even after their sentences are completed must clarify whether new arrivals with old felony convictions from sentence-only disenfranchisement states are automatically eligible, and must explain what procedures, if any, should be followed for restoration.
2. **Train Election Officials:** Clarify disenfranchisement policies and procedures for all state and local election officials through development of materials and training programs in each state. At a minimum, this should include distribution of posters, brochures and FAQ sheets to local and state elections offices.
3. **Train Criminal Justice Officials:** Provide training on disqualification and restoration policies for all correctional and criminal justice officials, particularly probation and parole staff. Correctional and criminal justice officials should also be actively engaged in describing these policies to persons under criminal justice supervision.
4. **Review Voting Restrictions on Non-Incarcerated People:** Given the serious practical difficulty of enforcing laws disqualifying people who are not incarcerated from voting – problems which clearly include both excluding eligible people from voting and allowing those who should be ineligible to vote – state policymakers should review such policies to determine if they serve a useful public purpose.

American Center for Voting Rights "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," August 2, 2005.

Using court records, police reports and news articles, ACVR Legislative Fund presented this Report documenting hundreds of reported incidents and allegations from around the country. The report **most often alleges voter intimidation and voter registration fraud, and to a lesser degree absentee ballot fraud and vote buying**. This report alleges a coordinated effort by members of some organizations to rig the election system through voter registration fraud, the first step in any vote fraud scheme that corrupts the election process by burying local officials in fraudulent and suspicious registration forms. paid Democrat operatives were far more involved in voter intimidation and suppression activities than were their Republican counterparts during the 2004 presidential election. Identified five cities as "hot spots" which require additional immediate attention, based on the findings of this report and the cities' documented history of fraud and intimidation: Philadelphia, PA, Milwaukee, WI, Seattle, WA, St. Louis/East St. Louis, MO/IL, and Cleveland, OH. Refutes charges of voter intimidation and suppression made against Republican supporters, discusses similar charges against Democrats, details incidents vote fraud and illegal voting and finally discusses problems with vote fraud, voter registration fraud and election irregularities around the country. Recommends:

- **Both national political parties should formally adopt a zero-tolerance fraud and intimidation policy that commits the party to pursuing and fully prosecuting individuals and allied organizations who commit vote fraud or who seek to deter any eligible voter from participating in the election through fraud or intimidation.** No amount of legislative reform can effectively deter those who commit acts of fraud if there is no punishment for the crime and these acts continue to be tolerated.



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- States should adopt legislation requiring government-issued photo ID at the polls and for any voter seeking to vote by mail or by absentee ballot. Government-issued photo identification should be readily available to all citizens without cost and provisions made to assure availability of government-issued identification to disabled and low-income citizens.
- States should adopt legislation requiring that all polling places be fully accessible and accommodating to all voters regardless of race, disability or political persuasion and that polling locations are free of intimidation or harassment.
- States should create and maintain current and accurate statewide voter registration databases as mandated by the federal Help America Vote Act ("HAVA") and establish procedures to assure that the statewide voter roll is current and accurate and that the names of eligible voters on the roll are consistent with the voter roll used by local election authorities in conducting the election.
- States should adopt legislation establishing a 30-day voter registration cutoff to assure that all voter rolls are accurate and that all registrants can cast a regular ballot on Election Day and the election officials have opportunity to establish a current and accurate voter roll without duplicate or fictional names and assure that all eligible voters (including all recently registered voters) are included on the voter roll at their proper precinct.
- States should adopt legislation requiring voter registration applications to be delivered to the elections office within one week of being completed so that they are processed in a timely manner and to assure the individuals registered by third party organizations are properly included on the voter roll.
- States should adopt legislation and penalties for groups violating voter registration laws, and provide the list of violations and penalties to all registration solicitors. Legislation should require those organizations obtaining a voter's registration to deliver that registration to election officials in a timely manner and should impose appropriate penalties upon any individual or organization that obtains an eligible voter's registration and fails to deliver it to election authorities.
- States should adopt legislation prohibiting "bounty" payment to voter registration solicitors based on the number of registration cards they collect.

The Advancement Project, "America's Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy" November 7, 2001

Written after the 2000 election, thesis of report is that **structural disenfranchisement**—the effect of breakdowns in the electoral system, is the new poll tax. Structural disenfranchisement includes "bureaucratic blunders, governmental indifference, and flagrant disregard for voting rights." Blame for structural disenfranchisement is laid squarely at the feet of **states and localities** that "shirk their responsibilities or otherwise **manipulate election systems,**" resulting in voters "either turned away from the polls or their votes are thrown out." Data and conclusions in the Report are taken from **eight sample case studies** of states and cities across the country and a survey of state election directors that reinforces the findings of the case studies (New York City-in six polling places Chinese translations inverted the Democrats with the Republicans; Georgia-the state computer crashed two weeks before the election, dropping thousands of voters from the rolls; Virginia-registration problems kept an untold number from voting; Chicago-in inner-city precincts with predominately minority populations, almost four out of every ten votes cast for President (in 2000) were discarded; St. Louis-thousands of qualified voters were placed on inactive lists due to an overbroad purge; Florida-a voting list purge of voters whose name and birth date closely resembled those of people convicted of felonies; and, Texas-significant Jim Crow like barriers to minority voting.) Most ballot blockers involve the structural elements of electoral administration: "ill-trained poll workers, failures to process registration cards on time or at all, inaccurate registration rolls, overbroad purges of voter rolls, unreasonably long lines, inaccurate ballot translations and a shortage of translators to assist voters who have limited English language skills."

### Findings:

- election directors lack the resources to effectively do their jobs and some lack the "ability or will to force local election officials to fix serious

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problems”;

- election officials are highly under funded and legislatures refuse to grant their requests for more money;
- due to a lack of funds, election officials must use old and inferior equipment and can't improve training or meet structural needs;
- election officials are generally unaware of racial disparities in voting; only three of the 50 state election administrators are non-white.

### Recommendations:

- federal policies that set nationwide and uniform election policies;
- federal guarantee of access to provisional ballots;
- enforcement of voter disability laws;
- automatic restoration of voting rights to those convicted of a crime after they have completed their sentence;
- a centralized data base of voters administered by non-partisan individuals;
- federal standards limiting precinct discarded vote rates to .25 %;
- federal requirements that jurisdiction provide voter education, including how to protect their right to vote; and laws that strengthen the ability of individuals to bring actions to enforce voting rights and anti-discrimination laws.

The Brennan Center and Professor Michael McDonald “Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General,” The Brennan Center for Justice at NYU School of Law, December 2005.

A September 15, 2005 Report submitted to the New Jersey Attorney General included lists of purportedly illegitimate votes in New Jersey in the 2004 general election, including lists of 10,969 individuals who purportedly voted twice and lists of 4,756 voters who were purportedly dead or incarcerated in November 2004. **Analysis of the suspect lists reveals that the evidence submitted does not show what it purports to show: cause for concern that there is serious risk of widespread fraud given the state of the New Jersey voter registration rolls.** These suspect lists were compiled by attempting to match the first name, last name, and birth date of persons on county voter registration files. **Analysis reveals several serious problems with the methodology used to compile the suspect lists that compromise the lists' practical value.** For example, middle initials were ignored throughout all counties, so that “J\_\_\_\_\_ A. Smith” was presumed to be the same person as “J\_\_\_\_\_ G. Smith.” Suffixes were also ignored, so that fathers and sons – like “B\_\_\_\_\_ Johnson” and “B\_\_\_\_\_ Johnson, Jr.” – were said to be the same person. **A presumption that two records with the same name and date of birth must represent the same person is not consistent with basic statistical principles.**

Re Claim of Double Voting by 4,497 Individuals:

- 1,803 of these 4,397 records of ostensibly illegal votes seem to be the product of a glitch in the compilation of the registration files (far more likely that data error is to blame for the doubly logged vote - to irregularities in the data processing and compilation process for one single county);
- another 1,257 entries of the 4,397 records probably represent similar data errors;
- approximately 800 of the entries on the list likely represent different people, with different addresses and different middle initials or suffixes;
- for approximately 200 of the entries in this category, however, less information is available (lack of or differences in middle initial or middle name);
- 7 voters were apparently born in January 1, 1880 – which is most likely a system default for registrations lacking date-of-birth information;
- for 227 voters, only the month and year of birth are listed: this means only that two voters with the same name were born in the same month and year, an unsurprising coincidence in a state of several million people;
- leaves approximately 289 votes cast under the same name and birth date – like votes cast by “P\_\_\_\_\_ S. Rosen,” born in the middle of the baby boom – but from two different addresses. It may appear strange, but there may be two P\_\_\_\_\_ S. Rosens, born on the same date in 1948 – and

such coincidences are surprisingly common. . In a group of just 23 people, it is more likely than not that two will share the same birthday. For 40 people, the probability is 90%. Many, if not most, of the 289 alleged double votes of persons registered at different addresses most likely reflect two separate individuals sharing a first name, last name, middle initial, and birth date.

But there is **no doubt that there are duplicate entries on New Jersey's registration rolls**. It is well known that voter registration rolls contain "deadwood" – registration entries for individuals no longer living at a given address or deceased. There is no evidence, however, that these extra registrations are used for widespread illegal voting. Moreover, **the problem of deadwood will soon be largely resolved: both the National Voter Registration Act of 1993 and the Help America Vote Act of 2002 require states to implement several systems and procedures as of January 1, 2006, that will clean the voter rolls of duplicate or invalid entries while protecting eligible voters from unintended disfranchisement.**

Democratic National Committee, "Democracy at Risk: The November 2004 Election in Ohio," DNC Services Corporation, 2005

Study re 2004 election in Ohio. Findings considered related to EAC study:

- **Statewide, 6 %of all voters reported feelings of intimidation: 16 percent of African Americans reported experiencing intimidation versus only 5 %of white voters.**
- **African American voters were 1.2 times more likely than white voters to be required to vote provisionally.** Of provisional voters in Cuyahoga County, 35% were African American, compared to 25% of non-provisional voters, matched by geography.
- Under Ohio law, the only voters who should have been asked for identification were those voting in their first Federal election who had registered by mail but did not provide identification in their registration application. **Although only 7% of all Ohio voters were newly registered (and only a small percentage of those voters registered by mail and failed to provide identification in their registration application), more than one third (37% reported being asked to provide identification.—meaning large numbers of voters were illegally required to produce identification. African American voters statewide were 47% more likely to be required to show identification than white voters. Indeed, 61% of African American men reported being asked to provide identification at the polls.**
- **Scarcity of voting machines caused long lines that deterred many people from voting: 3% of voters who went to the polls left their polling places and did not return due to the long lines; statewide, African American voters reported waiting an average of 52 minutes before voting while white voters reported waiting an average of 18 minutes; overall, 20% of white Ohio voters reported waiting more than twenty minutes, while 44% of African American voters reported doing so.**

The report also includes a useful summary and description of the reports that came through Ohio Election Protection on Election Day, which included a wide variety of problems, including voter intimidation and discrimination.

Pertinent recommendations:

- **codify into law all required election practices**, including requirements for the adequate training of official poll workers
- **adopt legislation to make clear and uniform the rules on voter registration.**
- **adopt uniform and clear published standards for the distribution of voting equipment and the assignment of official pollworkers among precincts**, to ensure adequate and nondiscriminatory access
- **improve training of official poll workers**
- **adopt clear and uniform rules on the use of, and the counting of, provisional ballots**, and distribute them for public comment well in advance of each election day
- **not adopt requirements that voters show identification at the polls, beyond those already required by federal law; vigorously enforce, to the full extent permitted by state law, a voter's right to vote without showing identification.**

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- **make voter suppression a criminal offense at the state level**, in all states
- **implement statewide voter lists** in accordance with the Help America Vote Act ("HAVA")
- **expend significantly more resources in educating voters on where, when and how to vote.**
- **partisan officials who volunteer to work for a candidate should not oversee or administer any elections.**

Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."

Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."

Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."

## **Supervision of the Justice Department's nationwide response to election crimes:**

Election Crimes Branch oversees the Department's handling of all election crime allegations other than those involving civil rights violations, which are supervised by the Voting Section of the Civil Rights Division. Specifically, the Branch supervises four types of corruption cases: crimes that involve the voting process, crimes involving the financing of federal election campaigns, crimes relating to political shakedowns and other patronage abuses, and illegal lobbying with appropriated funds. Vote frauds and campaign-financing offenses are the most significant and also the most common types of election crimes. The purpose of Headquarters' oversight of election crime matters is to ensure that the Department's nationwide response to election crime is uniform, impartial, and effective. An Election Crimes Branch, headed by a Director and staffed by Section attorneys on a case-by-case basis, was created within the Section in 1980 to handle this supervisory responsibility.

## **Voting Fraud:**

During **2002** the Branch assisted United States Attorneys' Offices in Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nevada, North Carolina, Rhode Island, South Carolina, South Dakota, Texas, Utah, West Virginia, and Wisconsin in handling vote fraud matters that occurred in their respective districts. During **2003** the Branch assisted United States Attorneys' Offices in Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, Nevada, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Virgin Islands, West Virginia, and Wisconsin in handling vote fraud matters that occurred in their respective districts. During **2004** the Branch assisted United States Attorneys' Offices in the following states in the handling of vote fraud matters that occurred in their respective districts: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, Nevada, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia, Washington, and Wisconsin. This assistance included evaluating vote fraud allegations to determine whether investigation would produce a prosecutable federal criminal case, helping to structure investigations, providing legal advice concerning the formulation of charges, and assisting in establishing several task force teams of federal and state law enforcement officials to investigate vote fraud matters.

## **Litigation:**

The Branch Director or Section attorneys also prosecute selected election crimes, either by assuming total operational responsibility for the case or by handling the case jointly with a United States Attorney's Office. The Section also may be asked to supervise the handling of a case in the event of a partial refusal of the local office. For example, in 2002 the Branch continued to supervise the prosecution of a sheriff and his election attorney for using data from the National Crime Information Center regarding voters' criminal histories to wage an election contest.

**District Election Officer Program:**

The Branch also assists in implementing the Department's long-standing District Election Officer (DEO) Program. This Program is designed to ensure that each of the 93 United States Attorneys' Offices has a trained prosecutor available to oversee the handling of election crime matters within the district and to coordinate district responses with Headquarters regarding these matters. The DEO Program involves the appointment of an Assistant United States Attorney in each federal district to serve a two-year term as a District Election Officer; the training of these prosecutors in the investigation and prosecution of election crimes; and the coordination of election-related initiatives and other law enforcement activities between Headquarters and the field. In addition, the DEO Program is a crucial feature of the Department's nationwide Election Day Program, which occurs in connection with the federal general elections held in November of even-numbered years. The Election Day Program ensures that federal prosecutors and investigators are available both at the Department's Headquarters in Washington and in each district to receive and handle complaints of election irregularities from the public while the polls are open and that the public is aware of how these individuals can be contacted on election day. In 2002 the Department enhanced the DEO Program by establishing a Ballot Integrity Initiative.

**Ballot Integrity Initiative:**

**Beginning in September of 2002**, the Public Integrity Section, acting at the request of the Attorney General, assisted in the implementation of a Ballot Integrity Initiative for the 2002 general election and subsequent elections. This initiative included increasing the law enforcement priority the Department gives to election crimes; holding a special day-long training event in Washington, DC for representatives of the 93 United States Attorneys' Offices; publicizing the identities and telephone numbers of the DEOs through press releases issued shortly before the November elections; and requiring the 93 U.S. Attorneys to communicate the enhanced federal prioritization of election crime matters to state and local election and law enforcement authorities. As part of Ballot Integrity Initiative, on October 8, 2002, the Public Integrity Section and the Voting Rights Section of the Department's Civil Rights Division co-sponsored a Voting Integrity Symposium for District Election Officers representing each of the 93 federal judicial districts. Topics discussed included the types of conduct that are prosecutable as federal election crimes and the federal statutes used to prosecute such cases. Attorney General John Ashcroft delivered the keynote address on the importance of election crime and ballot integrity enforcement. Assistant Attorney General of the Civil Rights Division Ralph Boyd and Assistant Attorney General of the Criminal Division Michael Chertoff also spoke to attendees on the protection of voting rights and the prosecution of election cases. As part of Ballot Access and Voting Integrity Initiative, on September 23 and 24, 2003, the Public Integrity Section and the Voting Rights Section of the Department's Civil Rights Division co-sponsored a two-day Symposium for DEOs representing each of the 93 federal judicial districts. Topics discussed included the types of conduct that are prosecutable as federal election crimes and the federal statutes used to prosecute such cases. Assistant Attorney General of the Civil Rights Division Alexander Acosta and Assistant Attorney General of the Criminal Division Christopher A. Wray delivered the keynote addresses on the importance of protecting voting rights and the prosecution of election cases. On July 20 and 21, 2004, the Public Integrity Section and the Voting Section of the Department's Civil Rights Division co-sponsored a two-day symposium for DEOs representing each of the 93 federal judicial districts. Topics discussed included the types of conduct that are prosecutable as federal election crimes and the federal statutes available to prosecute such cases, and the handling of civil rights matters involving voting. Attorney General John Ashcroft delivered the keynote address on the importance of protecting voting rights and the prosecution of election fraud. In addition, Assistant Attorney General Christopher A. Wray of the Criminal Division and Assistant Attorney General R. Alexander Acosta of the Civil Rights Division addressed conference attendees on voting rights and election fraud enforcement issues respectively.

As a result of the Initiative, during 2002 the number of election crime matters opened by federal prosecutors throughout the country increased significantly, as did the Section's active involvement in election crime matters stemming from the Initiative. At the end of 2002, the Section was supervising and providing advice on approximately 43 election crime matters nationwide. In addition, as of December 31, 2002, 11 matters involving possible election crimes were pending in the Section. During 2002 the Section closed two election crime matters and continued its operational supervision of 8 voting fraud cases (conspiracy to illegally obtain criminal history records to use to challenge voters (AL) and 7 cases of vote buying involving 10 defendants (KY).

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Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at [http://www.democracy.ru/english/library/international/eng\\_1999-11.html](http://www.democracy.ru/english/library/international/eng_1999-11.html)

Addresses the role of the United States Department of Justice in matters of election fraud, specifically: what sort of election-related conduct is potentially actionable as a federal crime; what specific statutory theories apply to frauds occurring in elections lacking federal candidates on the ballot, what federalism; procedural, and policy considerations impact on the federalization of this type of case; and how Assistant United States Attorneys should respond to this type of complaint. As a general rule, the federal crime of voter fraud embraces only organized efforts to corrupt of the election process itself: i.e., the registration of voters, the casting of ballots, and the tabulation and certification of election results. Moreover, this definition excludes all activities that occur in connection with the political campaigning process, unless those activities are themselves illegal under some other specific law or prosecutorial theory. This definition also excludes isolated acts of individual wrongdoing that are not part of an organized effort to corrupt the voting process. Mistakes and other gaffs that inevitably occur are not included as voter fraud. Prosecuting election fraud offenses in federal court is further complicated by the constitutional limits that are placed on federal power over the election process. The conduct of elections is primarily a state rather than a federal activity.

### **Four situations where federal prosecution is appropriate:**

1. Where the objective of the conduct is to corrupt the outcome of a federal elective contest, or where the consequential effect of the corrupt conduct impacts upon the vote count for federal office;
2. Where the object of the scheme is to discriminate against racial, ethnic or language minority groups, the voting rights of which have been specifically protected by federal statutes such as the Voting Rights Act, 42 U.S.C. section 1973 et seq.;
3. Where federalization is required in order to redress longstanding patterns of electoral fraud, either at the request of state or local authorities, or in the face of longstanding inaction by state authorities who appear to be unwilling or unable to respond under local law; and,
4. Where there is a factual basis to believe that fraudulent registration or voting activity is sufficiently connected to other forms of criminal activity that perusing the voter fraud angle will yield evidence useful in the prosecution of other categories of federal offense

### **Four advantages to federal prosecution:**

1. Voter fraud investigations are labor intensive - local law enforcement agencies often lack the manpower and the financial resources to take these cases on;
2. Voter fraud matters are always politically sensitive and very high profile endeavors at the local level - local prosecutors (who are usually themselves elected) often shy away from prosecuting them for that reason; the successful prosecution of voter fraud cases demands that critical witnesses be examined under oath before criminal charges based on their testimony are filed.
3. Many states lack the broad grand jury process that exists in the federal system; and
4. The defendants in voter fraud cases are apt to be politicians - or agents of politicians - and it is often impossible for either the government or the defendant to obtain a fair trial in a case that is about politics and is tried to a locally-drawn jury. The federal court system provides for juries to be drawn from broader geographic base, thus often avoiding this problem.

Several prosecutorial theories used by United States Attorneys to federalize election frauds are discussed.

### **Four questions used by prosecutors in evaluating the credibility of election complaints:**

1. does the substance of the complaint assuming it can be proven through investigation - suggest a potential crime;
2. is the complaint sufficiently fact-specific that it provides leads for investigators to pursue;
3. is there a federal statute that can be used to federalize the criminal activity at issue; and,
4. is there a special federal interest in the matter that warrants federalization rather than deferral to state law enforcement.

All federal election investigations must avoid the following: non-interference in elections unless absolutely necessary to preserve evidence; interviewing voters during active voting periods; seizing official election documentation; investigative activity inside open polls; and prosecutors must adhere to 18 U.S.C. section 592, prohibiting the stationing of armed men at places where voting activity is taking place.

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Election crimes based on race or language minority status are treated as civil rights matters under the Voting Rights Act.

People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>

Election Protection 2004 was the nation's most far-reaching effort to protect voter rights before and on Election Day. The historic nonpartisan program included: (1) a toll-free number, 1-866-OUR-VOTE, with free, immediate and multi-lingual assistance to help voters with questions about registration and voting, and assist voters who encounter barriers to the ballot box; (2) distribution of more than five million "Voters' Bills of Rights" with state-specific information; (3) 25,000 volunteers, including 6,000 lawyers and law students, who watched for problems and assisted voters on the spot at more than 3,500 predominantly African-American and Latino precincts with a history of disenfranchisement in at least 17 states; and (4) civil rights lawyers and advocates represented voters in lawsuits, preserved access to the polls, exposed and prevented voter intimidation, worked with election officials to identify and solve problems with new voting machines, technology and ballot forms, and protected voter rights in advance and on Election Day.

### **Voter Intimidation and Suppression Stories (Abridged):**

- An Associated Press story noted Election Protection's exposure of reported voter suppression tactics in **Colorado**: Officials with the Election Protection Coalition, a voter-rights group, also said **some voters in a predominantly black neighborhood north of Denver found papers on their doorsteps giving them the wrong address for their precinct.**
- Election Protection received a report from Boulder County, **Colorado** that a **poll worker made racist comments to Asian American voter and then told her she was not on the list and turned her away.** The voter saw others filling out provisional ballots and asked for one but was denied. Another Asian American woman behind her in line was also given trouble by the same poll worker (he questioned her nationality and also turned her away).
- Election Protection received a report from Florissant County, **Missouri** from a voter who lives in predominantly white neighborhood. While waiting in line to vote, a **Republican challenger challenged the black voters by requesting more proof of identification, residence, and signature match, while asking nothing from white voters.** Also, the same voter reportedly asked a few questions about voting but an election officials refused to provide any meaningful answer, insisting that "it's very simple", but provided white voters with information when requested. There was one other black voter in line who was also singled out for same treatment while white voters were not.
- The Election Protection hotline received reports from **Pinellas County, Florida** that individuals purporting to be from the Kerry campaign are going door-to-door handing out absentee ballots, and asking voters to fill them out, and then taking the ballots from them, saying "Vote here for Kerry. Don't bother going to the polls."
- The Election Protection Coalition received a report from a woman whose sister lives in **Milwaukee** and is on government assistance. Her sister was reportedly told by her "case manager" that if she voted for Kerry, she would stop receiving her checks.
- An illiterate, older and disabled voter in **Miami-Dade** asked for assistance reading the ballot and reported that a poll worker yelled at him and refused to assist him and also refused to allow him to bring a friend into the booth in order to read the ballot to him.
- The Election Protection Coalition have gathered reports that flyers are circulating in a black community in **Lexington, South Carolina** claiming they those who are behind on child support payments will be arrested as the polls.
- **Minority voters from Palm Beach County, Florida** reported to the hotline that they received middle-of-the-night, live harassing phone calls warning them away from the polls.
- A volunteer for Rock the Vote reported that two illiterate voters in **Michigan** requested assistance with their ballots but were refused and reportedly mocked by poll workers.
- The hotline received a call from a radio DJ in **Hillsborough County, Florida**, who stated that he has received many calls (most of which were from African-Americans) claiming that poll workers were turning voters away and not "letting" them vote.



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- The hotline received a call from **Pima County, Arizona**, indicating that **Democratic voters received calls throughout Monday evening, providing incorrect information about the precinct location**. Voters have had to be transported en masse in order to correct the problem.
- A caller from **Alabama** claims that he was told at his polling place that he could vote there for everything but the President and that he would have to go elsewhere in order to vote for a presidential candidate.
- Poll monitors in **Philadelphia** reports groups of lawyers, traveling in threes, who pull voters out of line and challenge them to provide ID, but when challenged themselves, they hop into waiting cars or vans and leave. Similar activity by Republican lawyers in Philadelphia was reported in the 2002 election.
- In **Cuyahoga, Ohio**, a caller reported that all black voters are being asked to show ID, while white voters are not. Caller report that he is black and had to show ID while his girlfriend is white and did not have to show ID.
- Two months ago, **suspicious phone calls to newly registered Democrats —telling them they weren't, in fact, registered to vote —** were traced to the Republican headquarters in the **Eastern Panhandle**. On **Monday, Democrats there said the calls have started again, even after the Berkeley County Clerk — a Republican — sent the party a cease-and-desist letter**. The Berkeley prosecutor, who also is county Democratic chairman, has called on the U.S. attorney to investigate.
- In **Tuscon, Arizona** a **misleading call informing voters that they should vote on November 3** has been traced back to the state GOP headquarters. The FBI is investigating.
- **A man driving around in a big van covered in American flags and a big picture of a policeman was reportedly parked in front of a polling place; he then got out and moved within the 75 ft limit**, until he was asked to leave; he then was found inside the polling place and was again asked to leave. Election Protection volunteers contacted officials and the man was eventually removed.
- The Election Protection hotline has received a report from **individuals who claim to have received recorded telephone message coming from Bill Clinton and ACT and reminding them to vote on Nov. 3rd**.
- In **Massachusetts**, the EP Hotline has received a report that a **radio station (WILD) is broadcasting that voters will be arrested on the spot if they have outstanding parking tickets**.
- In **Richland, South Carolina** Election Protection has received a report of a **poll manager turning away individuals who do not have photo ID issued to the county or a driver's license**; an EP lawyer spoke with the Poll Manager at 8:20 am and told her that people with other forms of ID should be allowed to vote by provisional ballot.
- In **Greenville**, a caller reported that a **white poll worker was asking Blacks for multiple form of I.D.** Fortunately, the voter who reported the problem did have a second I.D. but reported that some others were turned away. Election Protection attorneys have alerted election officials.
- In **Allegheny County, Pennsylvania**, an official looking **flyer advises Democratic voters to "create a peaceful voting environment" by voting on Wednesday, November 3**
- The week before the election, **flyers were circulated in Milwaukee under the heading "Milwaukee Black Voters League" with some "warnings for election time."** The flyer listed false reasons for which you would be barred from voting (such as a traffic ticket) and then warned that **"If you violate any of these laws you can get ten years in prison and your children will get taken away from you."**
- There is a **Jefferson County flyer which tells voters "See you at the Poles[sic]"... on November 4.**

Craig Donsanto, "Prosecution of Electoral Fraud Under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.

[NO SUMMARY FOUND] This is summary of federal role in prosecuting election crimes.

General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote,"



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Report to Congressional Requesters, September 2005.

**[SUMMARY FAILS TO NOTE ELECTION OFFICIALS' RESPONSES THAT LITTLE VOTING FRAUD OR VOTER INTIMIDATION WAS DETECTED. DETECTED VOTING FRAUD WAS RELATED TO SUBMISSION OF FALSE/MATERIALLY INCORRECT VOTER REGISTRATION APPLICATIONS AND TO ABSENTEE BALLOT FRAUD. VOTER SUPPRESSION EFFORTS OCCUR.]**

This Report focuses on the efforts of local election officials in 14 jurisdictions within 7 states to manage the registration process, maintain accurate voter registration lists, and ensure that eligible citizens in those jurisdictions had the opportunity to cast ballots during the 2004 election. The Report concentrates on election officials' characterization of their experiences with regard to (1) managing the voter registration process and any challenges related to receiving voter registration applications; checking them for completeness, accuracy, and duplication; and entering information into voter registration lists; (2) removing voters' names from voter registration lists and ensuring that the names of eligible voters were not inadvertently removed; and (3) implementing HAVA provisional voting and identification requirements and addressing any challenges encountered related to these requirements. The Report also provides information on motor vehicle agency (MVA) officials' characterization of their experiences assisting citizens who apply to register to vote at MVA offices and forwarding voter registration applications to election offices. The Report analyzed information collected from elections and motor vehicle agency offices in seven states—Arizona, California, Michigan, New York, Texas, Virginia, and Wisconsin. The 14 jurisdictions we selected were Gila and Maricopa Counties, Arizona; Los Angeles and Yolo Counties, California; City of Detroit and Delta Township, Michigan; New York City and Rensselaer County, New York; Bexar and Webb Counties, Texas; Albemarle and Arlington Counties, Virginia; and the cities of Franklin and Madison, Wisconsin.

Election officials representing all but one of the jurisdictions surveyed following the November 2004 election said they faced some challenges managing the voter registration process, including (1) receiving voter registration applications; (2) checking them for completeness, accuracy, and duplication; and (3) entering information into voter registration lists; when challenges occurred, election officials reported they took various steps to address them. All but 1 of the jurisdictions reported removing names from registration lists during 2004 for various reasons, including that voters requested that their names be removed from the voter registration list; information from the U.S. Postal Service (USPS) showing that voters had moved outside the jurisdiction; felony records received from federal, state, or local governments identifying voters as ineligible due to felony convictions; and death records received from state or local vital statistics offices. All of the jurisdictions reported that they permitted citizens to cast provisional ballots during the November 2004 election. In addition, 12 of the 14 jurisdictions to which this was applicable reported that they offered certain first-time voters who registered by mail the opportunity to cast provisional ballots. Local election officials in 12 of the 13 jurisdictions 13 we surveyed reported that they set up mechanisms to inform voters—without cost—about the outcome of their provisional votes during the November 2004 election. These mechanisms included toll-free telephone numbers, Web sites, and letters sent to the voters who cast provisional ballots. Election officials representing 8 of the 14 jurisdictions reported facing challenges implementing provisional voting for various reasons, including some poll workers not being familiar with provisional voting or, in one jurisdiction representing a large number of precincts, staff not having sufficient time to process provisional ballots.

Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," Demos: A Network of Ideas and Action, 2003.

A comprehensive survey and analysis of vote fraud in the United States. The methodology included doing nexis searches for all 50 states and surveying existing research and reports. In addition, Minnite did a more in-depth study of 12 diverse states by doing nexis searches, studying statutory and case law, and conducting interviews with election officials and attorneys general. Finally, the study includes an analysis of a few of the most high profile cases of alleged fraud in the last 10 years, including the Miami mayoral election (1997), Orange County congressional race (1996), and the general election in Missouri (2000). In these cases, Minnite shows that many allegations of fraud do not end up being meritorious. Minnite finds that **available evidence suggests that the incidence of election fraud is minimal and rarely affects election outcomes.** Election officials generally do a very good job of protecting against fraud. **Conditions that give rise to election fraud have steadily declined over the last century as a result of weakened political parties, strengthened election administration, and improved voting technology.** There is little available evidence that election reforms such as the National Voter Registration Act, election day registration, and mail-in voting have resulted in increases in election fraud. Election

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fraud appears also to be very rare in the 12 states examined more in-depth. Legal and news records turned up little evidence of significant fraud in these states or any indication that fraud is more than a minor problem. Interviews with state officials further confirmed this impression. Minnite found that, **overall, the absentee mail-in ballot process is the feature most vulnerable to voter fraud.** There is not a lot of evidence of absentee ballot fraud but the potential for fraud is greatest in this area because of a lack of uniformly strong security measures in place in all states to prevent fraud.

### **Suggested reforms to prevent what voter fraud does take place:**

1. effective use of new statewide voter registration databases;
2. identification requirements for first time voters who register by mail should be modified to expand the list of acceptable identifying documents;
3. fill important election administration positions with nonpartisan professionals;
4. strengthen enforcement through adequate funding and authority for offices responsible for detecting and prosecuting fraud; and
5. establish Election Day Registration because it usually requires voter identification and authorization in person before a trained election worker, which reduces the opportunity for registration error or fraud.
- 6.

People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

A description and analysis of the complaints and allegations of voting irregularities gathered by the Election Protection program during the 2004 presidential election. Election Protection received more than a thousand complaints of voter suppression or intimidation. Complaints ranged from intimidating experiences at polling places to coordinated suppression tactics. For example:

- Police stationed outside a Cook County, Illinois, polling place were requesting photo ID and telling voters if they had been convicted of a felony that they could not vote.
- In Pima, Arizona, voters at multiple polls were confronted by an individual, wearing a black tee shirt with "US Constitution Enforcer" and a military-style belt that gave the appearance he was armed. He asked voters if they were citizens, accompanied by a cameraman who filmed the encounters.
- There were numerous incidents of intimidation by partisan challengers at predominately low income and minority precincts
- Voters repeatedly complained about misinformation campaigns via flyers or phone calls encouraging them to vote on a day other than November 2, 2004 or of false information regarding their right to vote. In Polk County, Florida, for example, a voter received a call telling her to vote on November 3. Similar complaints were also reported in other counties throughout Florida. In Wisconsin and elsewhere voters received flyers that said:
  - "If you already voted in any election this year, you can't vote in the Presidential Election."
  - "If anybody in your family has ever been found guilty of anything you can't vote in the Presidential Election."
  - "If you violate any of these laws, you can get 10 years in prison and your children will be taken away from you."

There were also numerous reports of poll workers refusing to give voters provisional ballots.

The following is a summary of the types of acts of suppression and intimidation included in the report and a list of the states in which they took place. All instances of irregularities that were more administrative in nature have been omitted:

1. **Improper implementation of voter identification rules, especially asking only African Americans for proof of identity:** Florida, Ohio, Pennsylvania, Illinois, Missouri, Arkansas, Georgia, Louisiana
2. **Individuals at the polls posing as some sort of law enforcement authority and intimidating and harassing voters:** Arizona, Missouri
3. **Intimidating and harassing challengers at the polls:** Ohio, Michigan, Wisconsin, Missouri, Minnesota
4. **Deceptive practices and disinformation campaigns, such as the use of flyers with intentional misinformation about voting rights or voting procedures, often directed at minority communities; the use of phone calls giving people misinformation about polling sites and**

other procedures; and providing verbal misinformation at the polls in a way that appears to have been intentionally misleading: Florida, Pennsylvania, Illinois, Wisconsin, Missouri, North Carolina, Arkansas, Texas

5. **Refusal to provide provisional ballots to certain voters:** Ohio, Pennsylvania, Illinois, Michigan, Colorado, Missouri, Texas, Georgia, Louisiana
6. **Registration applications submitted through third parties that were not processed:** Arizona, Michigan, Nevada (registration forms destroyed by Sproul Associates)
7. **Improper removal from the voter registration list:** Arizona
8. **Individuals questioning voters' citizenship:** Arizona
9. **Police officers at the polls intimidating voters:** Illinois, Michigan, Wisconsin, Missouri, North Carolina

The report does not provide corroborating evidence for the allegations it describes. However, especially in the absence of a log of complaints received by the Department of Justice, this report provides a very useful overview of the types of experiences some voters more than likely endured on Election Day in 2004.

## Books

John Fund, *Stealing Elections: How Voter Fraud Threatens Our Democracy*, Encounter Books, 2004.

Focuses almost entirely on alleged transgressions by Democrats. Fund's accusations, if credible, would indicate that fraud such as voter registration fraud, absentee ballot fraud, dead people voting, and felon voting is prevalent throughout the country. However, due to its possible biases, lack of specific footnoting, and insufficient identification of primary source material, caution is strongly urged with respect to utilizing this book for assessing the amount and types of voter fraud and voter intimidation occurring.

Fund says that "Election fraud, whether its phony voter registrations, illegal absentee ballots, shady recounts or old-fashioned ballot-box stuffing, can be found in every part of the United States, although it is probably spreading because of the ever-so-tight divisions that have polarized the country and created so many close elections lately. Fund argues that fraud **has been made easier by the passage of the National Voting Rights Act** because it allows ineligible voters to remain on the voter rolls, allowing a voter to vote in the name of someone else. He claims dead people, people who have moved, and people in jail remain on the voting list. He believes because of NVRA illegal aliens have been allowed to vote.

**Absentee balloting makes it even worse:** someone can register under false names and then use absentee ballots to cast multiple votes. Groups can get absentee ballots for the poor and elderly and then manipulate their choices.

Provides a number of examples of alleged voter fraud, mostly perpetrated by Democrats. For example, he claims much fraud in St. Louis in 2000, including illegal court orders allowing people to vote, **felons voting, people voting twice, dead people voting, voters were registered to vacant lots, election judges were not registered and evidence of false registrations.** Another case he pays a great deal of attention to are the alleged transgressions by Democrats in Indian Country in South Dakota 2002, including **voter registration fraud, suspicious absentee ballot requests, vote hauling, possible polling place fraud, abusive lawyers at polling sites, and possible vote buying.**

Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.

Bulk of the book comprises stories from United States electoral history outside the scope of this project; however, tales are instructive in showing how far back irregular and illegal voting practices go. Focuses almost entirely on alleged transgressions by Republican, although at times it does include complaints about Democratic tactics. Gumbel's accusations, if credible, especially in the Bush-Gore election, would indicate there were a number of problems in key states in such areas as **intimidation, vote counting, and absentee ballots.** However, due to its possible biases, lack of specific footnoting, and insufficient identification of primary source material, caution is strongly urged with respect to utilizing this book for assessing the amount

# EAC SUMMARY OF LITERATURE REVIEW FOR VOTING FRAUD-VOTER INTIMIDATION RESEARCH

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and types of voter fraud and voter intimidation occurring.
Tracy Campbell, <i>Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004</i> , Carroll & Graf Publishers, 2005.
Traces the historical persistence of voter fraud from colonial times through the 2004 Bush-Kerry election. From the textual information, it quickly becomes obvious that voter fraud was not limited to certain types of people or to certain political parties. [SKIMPY SUMMARY-DOES NOT SAY MUCH.]
David E. Johnson and Jonny R. Johnson, <i>A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush</i> , Taylor Trade Publishing, 2004.
<b>Adds almost nothing to the present study.</b> It contains no footnotes and no references to primary source material, save what may be able to be gleaned from the bibliography. Takes a historical look at United States Presidential elections from Andrew Jackson to George Bush by providing interesting stories and other historical information. There are only three pages out of the entire book that touches on vote fraud in the first Bush election. The authors assert that the exit polls in Florida were probably correct. The problem was the pollsters had no way of knowing that thousands of votes would be invalidated. But the authors do not believe that fraud was the cause of the tabulation inaccuracy.
Mark Crispin Miller, <i>Fooled Again</i> , Basic Books, 2005.
Sets out to show that the 2004 election was won by Bush through nefarious means, and indicts the news media for not taking anomalies, irregularities, and <b>alleged malfeasance</b> in the process seriously enough. However, book is well sourced, and individual instances of alleged malfeasance discussed may be worth looking at. He accuses Republicans of committing crimes and improprieties throughout the country, including: <ol style="list-style-type: none"> <li>1. deliberate disparities in voting machine distribution and long lines in Democratic jurisdictions;</li> <li>2. misinterpretation of voting laws by elections officials to the detriment of Democratic voters;</li> <li>3. dirty tricks and deceptive practices to mislead Democratic and minority voters about voting times, places and conditions;</li> <li>4. machine irregularities in Democratic jurisdictions;</li> <li>5. relocating polling sites in Democratic and minority areas;</li> <li>6. suspicious mishandling of absentee ballots;</li> <li>7. refusing to dispense voter registration forms to certain voter registration groups;</li> <li>8. intimidation of students;</li> <li>9. suspicious ballot spoilage rates in certain jurisdictions;</li> <li>10. "strategic distribution of provisional ballots," and trashing of provisional ballots;</li> <li>11. harassment of Native American voters;</li> <li>12. a Republican backed organization engaging in voter registration efforts throughout the country that allegedly destroyed the voter registration forms of Democrats;</li> <li>13. illegitimate challenges at the polls by Republican poll watchers;</li> <li>14. improper demands for identification in certain areas;</li> <li>15. Republican challenges to the voter registration status of thousands of voters before the election, and the creation of lists of voters to challenge at the polls;</li> <li>16. wrongful purging of eligible voters from voting rolls;</li> <li>17. partisan harassment;</li> <li>18. the selective placement of early voting sites; and</li> <li>19. failure to send out absentee ballots in time for people to vote.</li> </ol> Details what he says was the inappropriate use of the Federal Voter Assistance Program that made voting for the military easy while throwing up obstacles

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for civilians overseas in their efforts to vote by absentee ballot, leading many of them to be disenfranchised.

## Legal

*Indiana Democratic Party vs. Rokita*, U.S. District Court Southern District of Indiana (Indianapolis) 1:05-cv-00634, U.S. Court of Appeals, 7<sup>th</sup> Circuit 06-2218

Although the proponents of SEA 483 asserted that the law was intended to combat voter fraud, no evidence of the existence of such fraud has ever been provided. No voter has been convicted of or even charged with the offense of misrepresenting his identity for purposes of casting a fraudulent ballot in person, King Dep. 95-96; Mahern Aff. ¶¶ 2-3, though there have been documented instances of absentee ballot fraud. King Dep. 120. Indeed, no evidence of in person, on-site voting fraud was presented to the General Assembly during the legislative process leading up to the enactment of the Photo ID Law. Mahern Aff. ¶¶ 2-

The State cannot show any compelling justification for subjecting only voters who vote in person to the new requirements of the Photo ID Law, while exempting absentee voters who vote by mail or persons who live in state-certified residential facilities.

On the other hand, absentee ballots are peculiarly vulnerable to coercion and vote tampering since there is no election official or independent election observer available to ensure that there is no illegal coercion by family members, employers, churches, union officials, nursing home administrators, and others.

Law gives virtually unbridled discretion to partisan precinct workers and challengers to make subjective determinations such as (a) whether a form of photo identification produced by a voter conforms to what is required by the Law, and (b) whether the voter presenting himself or herself at the polls is in fact the voter depicted in the photo Robertson Dep. 29-34, 45; King Dep. 86, 89. This is significant because any voter who is challenged under this Law will be required to vote by provisional ballot and to make a special trip to the election board's office in order to have his vote counted. Robertson Dep. 37; King Dep. 58.

The Photo ID Law confers substantial discretion, not on law enforcement officials, but on partisan precinct poll workers and challengers appointed by partisan political officials, to determine both whether a voter has presented a form of identification which conforms to that required by the Law and whether the person presenting the identification is the person depicted on it. Conferring this degree of discretion upon partisan precinct officials and members of election boards to enforce the facially neutral requirements of the Law has the potential for becoming a means of suppressing a particular point of view.

The State arguably might be justified in imposing uniform, narrowly-tailored and not overly-burdensome voter identification requirements if the State were able to show that there is an intolerably high incidence of fraud among voters misidentifying themselves at the polls for the purpose of casting a fraudulent ballot. But here, the State has utterly failed to show that this genre of fraud is rampant or even that it has ever occurred in the context of on-site, in-person voting (as opposed to absentee voting by mail) so as to justify these extra burdens, which will fall disproportionately on the poor and elderly.

And where the State has already provided a mechanism for matching signatures, has made it a crime to misrepresent one's identity for purposes of voting, and requires the swearing out of an affidavit if the voter's identity is challenged, it already has provisions more than adequate to prevent or minimize fraud in the context of in-person voting, particularly in the absence of any evidence that the problem the Law seeks to address is anything more than the product of hypothesis, speculation and fantasy.

In-person voter-identity fraud is notoriously difficult to detect and investigate. In his book *Stealing Elections*, John Fund observes that actual in-person voter fraud is nearly undetectable without a voter photo-identification requirement because anybody who provides a name that is on the rolls may vote and then walk away with no record of the person's actual identity. The problem is only exacerbated by the increasingly transient nature of society. Documentation of in-person voter fraud often occurs only when a legitimate voter at the polls hears a fraudulent voter trying to use her name, as happened to a woman in California in 1994. See Larry J. Sabato & Glenn R. Simpson, *Dirty Little Secrets* 292 (1996).

Regardless of the lack of extensive evidence of in-person voter fraud, the Commission on

Federal Election Reform (known as the Baker-Carter Commission) recently concluded that "there is no doubt that it occurs." State Ex. 1, p. 18.1 **Legal cases as well as newspaper and other reports confirm that in-person voter-identity fraud, including voter impersonation, double votes, dead votes, and fake addresses, plague federal and state elections. [The memorandum details several specific cases of various types of alleged voting fraud from the past several years]**

**Though they are largely unable to study verifiable data concerning in-person voter fraud, scholars are well aware of the conditions that foster fraudulent voting. See Fund, *supra*; Sabato & Simpson, *supra*, 321. In particular, fraud has become ever more likely as "it has become more difficult to keep the voting rolls clean of 'deadwood' voters who have moved or died" because such an environment makes "fraudulent voting easier and therefore more tempting for those so inclined." Sabato & Simpson, *supra*, 321. "In general, experts believe that one in five names on the rolls in Indiana do not belong there." State Ex. 25.**

For this case, Clark Benson, a nationally recognized expert in the collection and analysis of voter-registration and population data, conducted his own examination of **Indiana's voter registration lists and concluded that they are among the most highly inflated in the nation.**

The Crawford Plaintiffs cite the **concessions** by Indiana Election Division Co-Director King and the Intervenor-State that they are **unaware of any historical in-person incidence of voter fraud occurring at the polling place (Crawford Brief, p. 23) as conclusive evidence that in-person voter fraud does not exist in Indiana.** They also seek to support this conclusion with the testimony of two "veteran poll watchers," Plaintiff Crawford and former president of the Plaintiff NAACP, Indianapolis Chapter, Roderick E. Bohannon, who testified that they had never seen any instances of in-person voter fraud.

(*Id.*)

While common sense, the **experiences of many other states, and the findings of the Baker-Carter Commission all lead to the reasonable inferences that (a) in-person polling place fraud likely exists, but (b) is nearly impossible to detect without requiring photo identification, the State can cite to no confirmed instances of such fraud. On the other hand, the Plaintiffs have no proof that it does not occur.**

At the level of logic, moreover, it is **just reasonable to conclude that the lack of confirmed incidents of in-person voting fraud in Indiana is the result of an ineffective identification security system as it is to conclude there is no in-person voting fraud in Indiana.** So while it is undisputed that the state has no proof that in-person polling place fraud has occurred in Indiana, there does in fact remain a dispute over the existence *vel non* of in-person polling place fraud.

It is also important to understand that the **nature of in-person election fraud is such that it is nearly impossible to detect or investigate. Unless a voter stumbles across someone else trying to use her identity, see Sabato & Simpson, *supra*, 292, or unless the over-taxed poll worker happens to notice that the voter's signature is different from her registration signature State Ex. 37, ¶ 9, the chances of detecting such in-person voter fraud are extremely small. Yet, inflated voter-registration rolls provide ample opportunity for those who wish to commit in-person voter fraud. See Fund, *supra*, 24, 65, 69, 138; Sabato & Simpson, *supra*, 321. And there is concrete evidence that the names of dead people have been used to cast fraudulent ballots. See Fund, *supra*, 64. Particularly in light of Indiana's highly inflated voter rolls State Ex. 27, p. 9, Plaintiffs' repeated claims that there has never been any in-person voter fraud in Indiana can hardly be plausible, even if the state is unable to prove that such fraud has in fact occurred.**

*Common Cause of Georgia vs. Billups*, U.S. District Court, Northern District of Georgia (Rome) 4:05-cv-00201-HLM U.S. Court of Appeals, 11<sup>th</sup> Circuit 05-15784

The Secretary of State, as the Chief Election Officer in Georgia, informed the General Assembly before the passage of Act 53 in a letter (attached hereto as Exhibit A), and also informed the Governor in a letter (attached hereto as Exhibit B) before he signed the bill into law, that **there had been no documented cases of fraudulent voting by persons who obtained ballots unlawfully by misrepresenting their identities as registered voters to poll workers reported to her office during her nine years as Secretary of State.**

Although the Secretary of State had informed the members of the General Assembly and the Governor prior to the enactment of Act 53, that her office had

received many complaints of voter fraud involving absentee ballots and no documented complaints of fraud that involve ballots that were cast in person at the polls, the General Assembly ignored this information and arbitrarily chose instead to require only those registered voters who vote in person to present a Photo ID as a condition of voting, but deliberately refused to impose the same requirement on absentee voters.

The Stated Purpose Of The Photo ID Requirement Fraud Is A Pretext.

According to a press release prepared by the Communications Office of the Georgia House of Representatives, the purpose of Act 53 is: to address the issue of voter fraud by placing tighter restrictions on voter identification procedures. Those casting ballots will now be required to bring a photo ID with them before they will be allowed to vote.

Al Marks, Vice Chairman for Public Affairs and Communication of the Hall County GOP told the Gainesville Times: I don't think we need it for voting, because I don't think there's a voter fraud problem. Gainesville Times, "States Voters Must Present Picture IDs" (September 15, 2005) ([www.gainesvilletimes.com](http://www.gainesvilletimes.com)).

**There is no evidence that the existing provisions of Georgia law have not been effective in deterring and preventing imposters from fraudulently obtaining and casting ballots at the polls by misrepresenting their true identities to election officials and passing themselves off as registered voters whose names appear on the official voter registration list.**

The pretextual nature of the purported justification for the burden which the Photo ID requirement imposes on the right to vote is shown by the following facts:

(a) Fraudulent voting was already prohibited by existing Georgia law without unduly burdening the right of a citizen to vote.

(i) Fraudulent voting was already prohibited as a crime under O.C.G.A. §§ 21-2-561, 21-2-562, 21-2-566, 21-2-571, 21-2-572 and 21-2-600, punishable by a fine of up to \$10,000 or imprisonment for up to ten years, or both.

(ii) Voter registration records are updated periodically by the Secretary of State and local election officials to eliminate people who have died, have moved, or are no longer eligible to vote in Georgia for some other reason.

(iii) Existing Georgia law also required election officials in each precinct to maintain a list of names and addresses of registered voters residing in that precinct, and to check off the names of each person from that official list as they cast their ballots.

(iv) Registered voters were also required by existing Georgia law to present at least one of the seventeen forms of documentary identification to election officials who were required, before issuing the voter a ballot, to match the name and address shown on the document to the name and address on the official roll of registered voters residing in the particular precinct. O.C.G.A. § 21-2-417.

(b) There is no evidence that the existing Georgia law has not been effective in deterring or preventing fraudulent in-person voting by impersonators - the only kind of fraudulent voting that might be prevented by the Photo ID requirement. To the contrary, the Secretary of State, who, as the Superintendent of Elections, is the highest election official in Georgia, informed both the General Assembly (Exhibit A) and the Governor (Exhibit B) in writing that there had been no documented cases of fraudulent in person voting by imposters reported to her during her nine years in office.

(c) If the true intention of the General Assembly had been to prevent fraudulent voting by imposters, the General Assembly would have imposed the same restrictions on the casting of absentee ballots - particularly after the Secretary of State had called to their attention the fact that there had been many documented instances of fraudulent casting of absentee ballots reported to her office.

(d) Fraudulent in-person voting is unlikely, would be easily detected if it had occurred in significant numbers, and would not be likely to have a substantial impact on the outcome of an election:

(i) Many people vote at a local neighborhood polling place where they are likely to be known to and recognized by neighbors or poll workers.

(ii) Voters were required by existing Georgia law (O.C.G.A. § 21-2-417), to provide one of the seventeen means of identification to election officials.

(iii) Election officials are required, before issuing the ballot to the voter, to check off the name of either voter from an up-to-date list of the names and addresses of every registered voter residing in the precinct. If an imposter arrived at a poll and was successful in fraudulently obtaining a ballot before



## EAC SUMMARY OF LITERATURE REVIEW FOR VOTING FRAUD-VOTER INTIMIDATION RESEARCH

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the registered voter arrived at the poll, a registered voter, who having taken the time to go to the polls to vote, would undoubtedly complain to elections officials if he or she were refused a ballot and not allowed to vote because his or her name had already been checked off the list of registered voters as having voted. Likewise, if an imposter arrived at the polls after the registered voter had voted and attempted to pass himself off as someone he was not, the election official would instantly know of the attempted fraud, would not issue the imposter a ballot or allow him to vote, and presumably would have the imposter arrested or at least investigate the attempted fraud and report the attempt to the Secretary of State as Superintendent of Elections.

U.S. Department of Justice Section 5 Recommendation Memorandum (regarding HB 244), August 25, 2005 at <http://www.votingrights.org/news/downloads/Section%205%20Recommendation%20Memorandum.pdf>

**Overview:** Five career attorneys with the civil rights department investigated and analyzed Georgia's election reform law. Four of those attorneys recommended objecting to Section 59, the voter identification requirement. The provision required all voters to present government issued photo identification in order to vote. The objection was based on the attorneys' findings that there was little to no evidence of polling place fraud, the only kind of fraud an ID requirement would address, and that the measure would disenfranchise many voters, predominantly minority voters, in violation of Section 5 of the Voting Rights Act.

**Factual Analysis:** The sponsor of the measure in the state legislature said she was motivated by the fact that she is aware of vote buying in certain districts; she read John Fund's book; and that "if there are fewer black voters because of this bill, it will only be because there is less opportunity for fraud. She said that when black voters in her black precincts are not paid to vote, they do not go to the polls."

A member of the Fulton County Board of Registrations and Elections said that prior to November 2004, Fulton County received 8,112 applications containing "missing or irregular" information. Only 55 of those registrants responded to BOE letters. The member concluded that the rest must be "bogus" as a result. He also stated that 15,237 of 105,553 precinct cards came back as undeliverable, as did 3,071 cards sent to 45,907 new voters. Of these 3,071, 921 voted.

**Secretary of State Cathy Cox** submitted a letter testifying to the absence of any complaints of voter fraud via impersonation during her tenure. In the legal analysis, the attorneys state that if they determine that Georgia could have fulfilled its stated purpose of election fraud, while preventing or ameliorating the retrogression, an objection is appropriate. They conclude that the state could have avoided retrogression by retaining various forms of currently accepted voter ID for which no substantiated security concerns were raised. Another non-retrogressive alternative would have been to maintain the affidavit alternative for those without ID, since "There is no evidence that penalty of law is an insufficient deterrent to falsely signing an affidavit of identity." The attorneys point out that the state's recitation of a case upholding voter fraud in Dodge County does not support the purpose of the Act because that case involved vote buying and selling, not impersonation or voting under a false identity.



**Election Official Misconduct:**

- A person commits Election Official misconduct if while an election official the person:
  - Intentionally fails to perform an election duty, or knowingly does an unauthorized act with the intent to effect the election.
  - Knowingly permits, makes, or attempts to make a false count of election returns.
  - Intentionally conceals, withholds, or destroys election returns or attempts to do so.
  - Opens a ballot received from a voter at an election, unless otherwise permitted.
  - Marks a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time.
  - Otherwise attempts to learn how a voter marked a ballot.
  - Distributes or attempts to distribute election material knowing it to be fraudulent.
  - Knowingly refuses to register a person who is entitled to register under the rules of that jurisdiction.

**Petition Subscription:**

- A person commits a crime of improper subscription to a petition or referendum if:
  - He signs a name other than his own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office.
  - Knowingly signs more than once for the proposition, question, or candidate at one election.
  - Signs a petition proposing an initiative or referendum while knowingly not being a qualified voter.
  - Solicits, accepts, or agrees to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative.

**Campaign misconduct:**

- A person commits a crime of campaign misconduct if he knowingly makes a communication:
  - Containing false factual information relating to a candidate for an election that the person knows to be false and that a person could reasonably construe as damaging to the candidate's reputation for honesty or integrity, or to the candidate's qualifications to serve if elected to office.
  - Knowingly removes, alters, defaces or covers any political sign of any candidate for public office for a prescribed period prior to and following the election.

**Unlawful Interference with Voting:**

- A person commits the crime of unlawful interference with voting when the person:

- Uses, threatens to use, or causes to be used force, coercion, violence, restraint, or inflicts, threatens to inflict, or causes to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting.
- Knowingly pays, offers to pay, or causes to be paid money or other valuable thing to a person to vote or refrain from voting for a candidate at an election or for an election proposition or question.
- Has an official ballot in possession outside the voting room, unless the person is an election official or other person authorized by law or local ordinance.
- Makes, or knowingly has in possession, a counterfeit of an official election ballot.
- Knowingly solicits or encourages a registered voter who is no longer qualified to vote in an election.
- Fraudulently alters or changes the vote of any elector, by which such elector is prevented from voting as he intended.
- Knowingly causes to be mailed or distributed, or knowingly mails or distributes, literature that includes a designation of the voter's precinct polling place other than a precinct polling place listed for that voter in an official precinct polling list that constituted the latest official precinct polling list.
- Knowingly challenges a person's right to vote without probable cause or on fraudulent grounds, or who engages in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or delay the process of voting.
- As an employer, attempts by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his vote in any election, or who requires or demands an examination or inspection by himself or another of an employee's ballot.
- Removes or destroys any of the supplies or other conveniences placed in the voting booths or compartments for the purpose of enabling the voter to prepare his or her ballot.
- Removes, tears down, or defaces the cards printed for the instruction of voters.
- Removes, tears down, marks or otherwise defaces any voter index with the intent to falsify or prevent others from readily ascertaining the name, address, or political affiliation of an voter, or the fact that a voter has or has not voted.

*Voter Reg  
Driver -*

### **Voter Misconduct**

- A voter commits voter misconduct if the person:
  - Votes or attempts to vote in the name of another person or in a name other than person's own.
  - Votes or attempts to vote more than once at the same election with the intent that the person's vote be counted more than once.
  - Intentionally makes a false affidavit, swears falsely, or falsely affirms under an oath required by a statute regarding their voting status.
  - Knowingly solicits a person to vote after the polls are closed with the intent that the vote be counted.

- Registers to vote without being entitled to register.
- Knowingly makes a material false statement while applying for voter registration or reregistration.
- Voters or attempts to vote in an election after being disqualified.

#### **Unlawful Interference With an Election**

- A person commits the crime of unlawful interference with an election if the person:
  - Induces or attempts to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward.
  - Intentionally changes, attempts to change, or causes to be changed an official election document including ballots, tallies, and returns.
  - Intentionally delays, attempts to delay, or causes to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.
  - Directly or through any other person advances, pays, solicits, or receives or causes to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office.

Margaret Sims /EAC/GOV

11/13/2006 10:27 AM

To Juliet E. Hodgkins/EAC/GOV@EAC

cc

bcc

Subject VF-VI Another DOJ Objection

Julie:

I just remembered that there was one other DOJ objection. It was about the way the consultants described the Election Crimes Branch focus on cases. In the interview with Donsanto (the only interview I attended), he made reference to the fact that the Election Crimes Branch used to only go after conspiracies, not individuals. Now, however, they had begun prosecuting individuals for noncitizen and felon voting. The consultants heard an unexpressed "instead", which would mean that DOJ had dropped pursuing conspiracies in favor of going after individuals. Based on my previous experience, I heard and unexpressed "in addition", meaning that DOJ was not just prosecuting conspiracies, the department also had begun to prosecute individuals.

I had lengthy discussions with the consultants over this issue as well. Donsanto confirmed that he meant "in addition", and the lists of cases he provided indicates that the department continues to pursue conspiracies. (It doesn't make sense any other way, unless you believe that the government is out to get the little guy.) --- Peggy

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Margaret Sims /EAC/GOV

11/07/2006 11:29 AM

To Juliet E. Hodgkins/EAC/GOV@EAC

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Subject Re: VF and VI study

OK, I will get started on the interview summaries today.

DOJ (Donsanto and Tanner) raised objections to the consultants' description of their interviews, which state that DOJ officials agreed they were bringing fewer intimidation and suppression cases. An advocacy group is going after DOJ, accusing the agency of doing just that for political reasons, so this is something DOJ wants corrected.

Apart from the consultants pre-existing bias that "the feds aren't doing enough", a big part of the problem appears to have been a misunderstanding over terminology. When our consultants used the term "intimidation", they included all sorts of suppression activities. When Craig Donsanto used the term "intimidation", he was using the definition under federal criminal vote fraud statutes, which requires the action be accompanied by threat of physical or economic harm. (He told me he has had only one such case in 30 years.) His office is actively pursuing voter suppression activities under statutes other than federal voter intimidation laws (e.g.; the recent case in NH where a campaign operative conspired to block election day GOTV telephone lines of the opposing party). A copy of Tanner's comments on the interview summary in the status report for the Standards and Advisory Boards meetings is attached.

I had many long discussions with Tova and Job about this. I was able to get them to soften their description (see 4th bullet on page 7 of the draft report), but not entirely to my satisfaction. Also, at the Working Group meeting, it was agreed that the consultants would add a note to their definition to clarify that the working definition for purposes of the research includes activities that do not meet the federal definition of voter intimidation. The resulting note on page 5 of the draft report is too vague.

DOJ has not seen everything the consultants put in the draft final report, so they may have additional concerns. For example, the consultants' recommendations include the following:

**Attend the Department of Justice's Ballot Access and Voting Integrity Symposium** . The consultants also believe it would be useful for any further activity in this area to include attendance at the next Ballot Access and Voting Integrity Symposium. According to the Department, DEOs are required to attend annual training conferences centered on combating election fraud and voting rights abuses. These conferences sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, feature presentations by civil rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices. According to the Department, DEOs are required to attend annual training conferences centered on combating election fraud and voting rights abuses. These conferences sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, feature presentations by civil rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices.

**Footnote:**

By attending the symposium researchers could learn more about the following:

How DEOs are trained, e.g. what they are taught to focus their resources on; How they are instructed to respond to various types of complaints; How information about previous elections and voting issues is presented; and, How the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants.

DOJ has stated that this is an internal meeting, involving only DOJ officials, US Attorneys and FBI. EAC researchers cannot be admitted without opening the meeting to other outsiders. DOJ does not want to do this, probably for two reasons: (1) confidential information on current enforcement cases may be

030857

**Deliberative Process  
Privilege**

discussed; and (2) making enforcement strategies public could give unscrupulous individuals a virtual "how to" manual for circumventing such strategies when committing election crimes.

We may also have a hard time gaining access to the DOE reports and the Voting Section records of complaints, as they probably aren't considered public documents.

--- Peggy



DOJ-TannerComments-TW\InterviewSummary.doc

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV

11/07/2006 09:47 AM

To Margaret Sims/EAC/GOV@EAC

cc

Subject Re: VF and VI study

that would be great. I am also interested in identifying the points of contention between DOJ and the consultants.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV

11/07/2006 09:45 AM

To Juliet E. Hodgkins/EAC/GOV@EAC

cc

Subject Re: VF and VI study

Yes (at T:\RESEARCH IN PROGRESS\VOTING FRAUD-VOTER INTIMIDATION\Interviews\Interview Summaries). Do you want me to do the same with those as I did with the literature summaries? --- Peggy

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV

11/07/2006 09:33 AM

To Margaret Sims/EAC/GOV@EAC

cc

Subject VF and VI study

030852

Did Tova and Job provide us with summaries or notes of their interviews?

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

030859

To: Members of the United States Election Assistance Commission  
Cc: Thomas Wilkey, Executive Director, and Julie Thompson Hodgkins, General Counsel, Election Assistance Commission  
From: Tova Andrea Wang  
Re: Project on Voter Fraud and Intimidation  
Date: December 7, 2006

As one of the consultants and authors of the report on voter fraud and intimidation released by the Election Assistance Commission today, I am writing to request that the EAC restore the information that has been altered and removed from the research report we submitted to the EAC in July, 2006.

Job Serebrov and I spent over a year and hundreds of hours working on the report on voter fraud and voter intimidation in a bipartisan and highly effective manner. The report we wrote was a reflection of the detailed and laborious research we did over these many months. Unfortunately, the report the EAC released today does not fully reflect our research and the report of our findings submitted to the EAC in July, 2006.

After being unable to get any action taken on the report for months, I learned very recently that the General Counsel of the EAC would be taking responsibility for "revising" the report. On November 15 of this year I requested that Job Serebrov and I be permitted to review any revisions or changes made by EAC staff to the draft we submitted. We both offered to work collaboratively and cooperatively with EAC staff to ensure that the document produced was the most informative and useful product possible. This request was denied. Again, on November 29, 2006, upon learning that the report was to become public at an upcoming EAC meeting, I requested in writing that Job Serebrov and I be at least allowed to see embargoed copies of the report to be released before that December 7, 2006 meeting. That request was denied. On December 4, 2006 I offered to sign a confidentiality agreement whereby I would agree not to discuss the report before its public release. That request was also denied.

It is my understanding that with other research reports for which the EAC has contracted consultants there has been a process of give and take between the consultants and the EAC staff and commissioners prior to public release of the report. The consultants in this instance were repeatedly denied that opportunity, leading to today's result.

The issues around voter fraud and intimidation are controversial, making it all the more necessary that the research around it be as free from politics as possible. That is why the EAC made this project a bipartisan effort, with a bipartisan team of consultants and a bipartisan working group to inform and advise us on our work.

The EAC has a statutory obligation to provide the Congress and the American public the best research, data and guidance it can. Knowledge about the extent and nature of voter fraud and intimidation is fundamental to ensuring the right of every eligible American to vote and that every legitimate vote is counted.

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**Deliberative Process  
Privilege**



I hope the EAC will reconsider its actions of today and release the report that was written by the consultants so that the Congress and the voters can engage in an informed and honest discussion about one of the most serious issues confronting our democracy today.

Please respond to this request by Monday, December 11. Thank you for your timely consideration.

CONNECTICUT

DELAWARE

030862

## POLITICAL MATERIAL

- \* NO EMPLOYER SHALL PUT ~~ANY~~ INFO INTO AN EMPLOYEE'S PAY ENVELOPE
- \* EVERY PERSON WHO KNOWINGLY CHALLENGES A PERSON'S RIGHT TO VOTE W/O PROBABLE CAUSE OR ON FRAUDULENT GROUNDS - OR MAKES GROUNDSLESS CHALLENGING, OR ADVISES SOMEONE FRAUDULENTLY THAT THEY ARE INELIGIBLE TO VOTE IS GUILTY OF A CRIME
- \* ANY PERSON IN POSSESSION OF A FIREARM OR ANY UNIFORMED PEACE OFFICER, GUARD, OR SECURITY PERSONNEL STATIONED IN THE IMMEDIATE VICINITY OF BILLING PLACE W/O WRITTEN AUTHORIZATION OF APPROPRIATE OFFICIALS
- \* ANY PERSON HAVING CHARGE OF A COMPLETED ABSENT VOTER BALLOT WHO WILLFULLY INTERFERES OR CAUSES INTERFERENCE W/ ITS RETURN TO THE LOCAL ELECTION OFFICIALS.

## Colorado

- \* NO NAME SHALL BE ADDED TO THE REGISTRATION BOOK OF ANY PRECINCT AFTER CLOSE OF REGISTRATION.  
- KNOWING ELECTION OFFICIAL WHO CAUSES NAME TO BE ADDED - GUILTY OF CRIME
- \* CAN'T MUTILATE OR ERASE ANY NAME, FIGURE OR WORD IN REGISTRATION BOOK, REGISTRATION LIST, OR POLLBOOK
- \* ELECTION JUDGE CAN'T WILLFULLY OR MALICIOUSLY REFUSE OR NEGLECT TO RECEIVE THE BALLOT OF A REGISTERED VOTER
- \* CAN'T CAUSE THROUGH DECEIT A PERSON TO SUBMIT A DEFECTIVE BALLOT.
- \* DON'T KNOWINGLY VOTE IN WRONG PRECINCT

030863

- \* Registers To Vote w/o Being ENTITLED To
- \* Makes False Statement While Registering

### Arizona

- \* Counterfeiting a Ballot OR Circulating a Counterfeited Ballot
- \* Interference w/ Election officials Duties (Knowingly)
- \* ~~Attempts To Fix an Election~~
- \* Coercion OR Intimidation (Same as Alaska)
- \* Knowingly Remove, Alter, Deface OR Cover up Political Sign of ANY Candidate For Public Office For Prescribed Period

### Arkansas

- \* Can't Tamper w/ Voting Machines

### California

- \* Persons in charge of Registering Voters may NOT Knowingly Register a False Person or a Person They Know To Be Fraudulently Registering
- \* Misuse of Voter Registration Information or obtaining info other than as permitted by law
- \* Can't Pay To Get Someone To Become a Candidate or Withdraw as a Candidate
- \* Can't Send Voters False info about Their Polling Place
- \* No Person shall Destroy, Tear Down or Remove Polling Booth, Things w/ Polling Booth.

## Alabama

- \* Vote More Than Once OR Vote When NOT ENTITLED
- \* False IMPERSONATION
- \* Bribe or attempting to BRIBE, INFLUENCE
- \* Buy or offer to Buy Vote
- \* Sell Vote
- \* ALTERING OR CHANGING SOMEONE'S VOTE
- \* DISTURB, PREVENT or ATTEMPT TO PREVENT a Vote
- \* Coercion By an EMPLOYER over Employee
- \* Provide False INFO to Vote or Register to Vote

## Alaska - Anything New?

- \* Election OFFICIAL 1) FAILS TO PERFORM (Non-Ferrous)  
2) False COUNT 3) CONCEALS, WITHHOLDS, DESTROYS, ATTEMPTS. ELECTION RETURNS  
4) OPENS a Ballot Received w/o PERMISSION 5) MARKS a Ballot (to IDENTIFY IT) 6) ATTEMPS to LEARN HOW a VOTER MARKED
- \* PETITION SUBSCRIPTION - Signs WRONG name, PAID, Signs Twice
- \* Knowingly DISSEMINATE INFO THAT IS FALSE THAT HURTS CANDIDATE'S REPUTATION
- \* Uses, THREATENS TO USE or CAUSES TO BE USED FORCE, COERCION, VIOLENCE OR RESTRAINT TO COMPEL or INFLUENCE a VOTE or REFRAINING a VOTE
- \* Has OFFICIAL Ballot OUTSIDE of VOTING ROOM unless AUTHORIZED
- \* COUNTERFEIT Ballots

## STATE VOTING LAWS - CRIMINAL OFFENSES

1. BUYING VOTES
2. SELLING VOTES
3. ALTERING OR CHANGING VOTE ON ELECTION DAY
4. PROVIDING FALSE INFO TO REGISTER OR VOTE
5. COUNTERFEITING OR DISTRIBUTING UNLAWFUL BALLOTS
6. FALSE ENDORSEMENT, DISTRIBUTION OR DELAY IN DELIVERY OF BALLOT
7. INTERFERENCE W/ OR CORRUPTION OF ELECTION OFFICER
8. COERCION OR INTIMIDATION OF ELECTOR
9. TAMPERING W/ POLITICAL SIGNS
10. WILLFUL REGISTRATION OF FICTITIOUS PERSON
11. DEPUTY REGISTRARS, FAILURE TO RETURN AFFIDAVITS OF REG.

- TRYING TO GET A COMMON LIST OF VOTE CRIMES THROUGHOUT THE STATES

\* GET COMMON LIST - USE COMMON TERMS

030866

## ALABAMA

Miscellaneous Offences include:

1. Illegal voting or attempting to vote ?
  2. Illegal voting at municipal elections ?
  3. Bribing or attempting to influence voter
  - ✓4. Buying votes
  - ✓5. Selling votes
  6. Candidate barred by bribery
  - ✓7. Altering or changing vote of elector
  8. Disturbing elector on election day
  9. Employer intimidating employee
  10. Coercion of employees of corporations
  - ✓11. Providing false information to register or vote
- (Ala.Code 1975 § 17-23)

## ALASKA

Election Offenses, Corrupt Practices, and Penalties include:

1. Election official misconduct in the first degree
  2. Election official misconduct in the second degree
  3. Improper subscription to petition
  4. Campaign misconduct in the first degree
  5. Campaign misconduct in the second degree
  6. Campaign misconduct in the third degree
  7. Applicability of campaign misconduct provisions
  8. Telephone campaign misconduct
  9. Unlawful interference with voting in the first degree
  10. Unlawful interference with voting in the second degree
  11. Voter misconduct in the first degree
  12. Voter misconduct in the second degree
  13. Unlawful interference with an election
  14. Refusal to allow employees time off
  15. Effect of certain convictions
  16. Disposition of cases involving corrupt practice
  17. Time limitations
  18. Definitions
- (AD ST § 15.56)

## ARIZONA

Penal Provisions, General Provisions

1. Applicability of penal provisions
- ✓2. Counterfeiting or distributing unlawful ballots; classification
- ✓3. False endorsement, knowing destruction or delay in delivery of ballot; classifications (diff name)
- ✓4. Interference with or corruption of election officer; interference with voting equipment; classification
5. Early ballot abuse; classification

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6. Changing vote of elector by corrupt means or inducement; classification
  7. Election officer ascertaining or disclosing elector's vote; classification
  8. Election officer changing vote of elector by menace or reward; classification
  9. Failure or refusal to perform duty by election officer; classification
  10. Refusal by election officer to perform duty; violation of election law; classification
  11. Counterfeiting election returns; classification
  12. Intimidation of elector by employer; classification
  - ✓ 13. Coercion or intimidation of elector; classification
  14. Corruption of electors; classification
  15. Election wagers; classification
  16. Illegal voting; pollution of ballot box; removal or destruction of ballot box, poll lists or ballots; classification
  - ? 17. Unlawful acts by voters with respect to voting; classification
  18. Additional unlawful acts by persons with respect to voting; classification
  - ✓ 19. Political signs; tampering; classification
  20. Signing of petitions; violation; classification
- (A.R.S. T. 16, Ch. 7)

## ARKANSAS

### General Provisions

1. Misdemeanors
2. Felonies

(A.C.A. § 7-1-103, 104)

## CALIFORNIA

### Penal Provisions

#### A. General Provisions

1. Scope of division
2. General fine
3. Failure to perform or violation of duty; general penalty

#### B. Voter Registration

1. Violations; imprisonment
- ✓ 2. Willful registration of fictitious person or person not requesting registration; violations; imprisonment
- ? 3. Deputy or registration elections official; violations; imprisonment
4. Interference with transfer of completed affidavits of registration; unauthorized retention or denial of right to return registration cards; misdemeanor
- ✓ 5. Deputy registrars; failure to return affidavits of registration; misdemeanor; report; civil or criminal action
6. Affidavit of registration or voter registration card; statement in support or opposition of candidates by other than registrant; misdemeanor
7. Tampering with party affiliation declaration
- ? 8. Voter registration cards; distribution; violations; infraction



- ✓9. Electronic submission of absentee ballot application for another registered voter; violation; offense; penalty
  - ✓10. Registration assistance for consideration; failure to comply with statutory requirements; misdemeanor; penalties; exemptions
  - 11. Affidavit records; notice of non-complying affidavits; failure to comply with statutory requirements; offense; penalties; exemptions
  - ✓12. Misuse of voter registration information; violation
  - ✓13. Disclosure of home address or telephone number on voter registration card; violations
- C. Nomination of Candidates
- ✓1. Subscription of false names to petitions; felony; imprisonment
  - ✓2. Nomination papers; false making, defacement or destruction; penalty
  - 3. Failure to properly file nomination papers or declaration of candidacy; misdemeanor
  - 4. False nomination papers or declaration of candidacy; filing or submission; penalty
  - 5. Suppression of nomination papers or declarations of candidacy; penalty
  - ✓6. Payment of consideration to induce a person not to become or to withdraw as a candidate; imprisonment
- D. Election Campaigns
- 1. Campaign literature
    - ✓a. Simulated ballot or sample ballot; printing or duplication; statement, official seal or insignia violations; misdemeanor
    - ✓b. False precinct information
    - c. Mass mailing; penal provisions
    - d. Reproduction or facsimile of seal of county or seal of local government agency in campaign literature or mass mailing with intent to deceive voters; offense
  - 2. Political Party Caucuses
    - a. Consideration for voting or agreeing to vote for or against nominees or candidates; penalty
    - ✓b. Bribes; giving or receiving; penalty
  - 3. Deceptive Online Activities
    - ✓a. Short title; political cyberfraud; definitions
    - b. Application to domain name registrar, registry, or registration authority
    - c. Transfer of domain name as remedy
    - d. Jurisdiction
  - 4. Political Meetings
    - a. Prevention of electors from assembling; misdemeanor
  - 5. Misrepresentation by Candidates
    - a. Implication that candidate is incumbent or acting in capacity of public officer; misdemeanor; injunction
    - b. Candidates' statements; false statement of material fact with intent to mislead; punishment

- 6. Solicitation of Funds
  - a. Solicitation without required consent; violations; misdemeanor
  - b. Solicitation not authorized by candidate or committee; use of name; notice; misdemeanor
- 7. Electioneering
  - ✓ a. Electioneering where voters may be casting votes; misdemeanor
  - b. Absentee voters; solicitation in the residence on the immediate presence of absentee voter; misdemeanor
- 8. Vandalism at Polling Places
  - a. Violations; misdemeanor
- 9. Misuse of State Publications
  - a. State agencies and departments; misuse of publications
- E. Ballots
  - ✓ 1. Use or furnishing of imitation ballot paper or punchcards; penalties
  - ✓ 2. Printing or circulation of nonconforming ballots
  - ✓ 3. Knowing distribution of unauthorized application for absent voter's ballot
  - 4. Receipt or examination of, or solicitation of voter to show voted ballot; penalty
- F. Corruption of the Voting Process
  - 1. General Provisions
    - a. Fraud; casting of votes; felony; imprisonment
    - ✓ b. Public officials; aiding illegal casting of votes; fraud; disqualification from holding office in state; imprisonment
    - c. Interference with officers or voters; imprisonment
  - 2. Corruption of Voters
    - ✓ a. Offer or promise of office, place or employment; to induce other to vote or refrain from voting; penalties
    - ✓ b. Gift or other consideration to induce person to vote or refrain from voting; penalties
    - ✓ c. Payment or offer to pay, lend or contribute to induce person to vote or refrain from voting
    - ? d. Bribery; payment of consideration with intent to bribe; penalties
    - ✓ e. Boarding, lodging or maintaining persons with intent to secure vote or to induce voting
  - 3. Intimidation of Voters
    - ✓ a. Use of force, violence, tactic of coercion or intimidation; penalties
    - ? b. Prohibited activities in proximity of polling place relating to the intent of dissuading others from voting; penalties
    - ? c. Political material in pay envelopes
    - ✓ d. Challenging right to vote without probable cause; conspiracies; penalty

give a thing of value

- ✓ e. Persons in possession of a firearm or uniformed peace officers or security guards stationed near polling place without authorization; penalty; application
- f. Hiring or arranging for another in possession of firearm or uniformed peace officer or security guard to be stationed near polling place; penalty
- g. Elections official; immediate vicinity
- 4. Corruption of Voting
  - ✓ a. Fraudulent voting; crime
  - b. Procuring or advising vote of unqualified persons; aiding or abetting offenses
  - c. Rejected
  - d. Precinct board members; ballot violations; misdemeanor
  - e. Precinct board members; disclosure of vote without consent; misdemeanor
  - ✓ f. § 18564. Tampering with or damaging voting machines; interference with secrecy of voting; unauthorized making or possession of keys; willful substitution of forged source codes
  - g. Civil action for offenses
  - h. Aiding and abetting offenses; penalty
  - i. Forging or counterfeiting election returns
  - j. Altering returns
  - k. Offenses at the polls; penalties
  - l. Aiding or abetting offenses
  - m. Voting results; offenses; misdemeanor
  - ✓ n. Counting board members; failure to obey lawful orders
  - o. Counting board members; liabilities and penalties
  - p. Deceiving voter unable to read; causing voter to vote for different person than intended through fraud; felony
  - q. Refusal of person required to be sworn or to answer questions; misdemeanor
  - r. Unlawfully acting as election officers; acting in unauthorized capacity; felony
  - s. Absent voter ballot; willful interference with delivery, retention beyond time limits or denial of right to return completed ballot; misdemeanor
  - ✓ t. Willful interference or cause of interference with return to local elections official by person in charge of completed absent voter ballot
  - ✓ u. Absent voter ballot; fraudulent signature
- G. Initiative, Referendum, and Recall
  - 1. Improper Signature – Gathering Tactics
    - a. Misrepresentation or false statement concerning petitions
    - b. Refusal to show text of measure or petition; misdemeanor

- c. Obscuring summary of initiative or referendum measure; misdemeanor
      - d. Payment for signatures; offense
    - 2. False of Ineligible Signatures on Petition
      - ☒ a. Solicitation of circulators to affix or permit false or forged signatures; penalty
      - ☒ b. Circulation with false, forged or fictitious names; penalties
      - ☒ c. Signing more than once or while disqualified; penalty
      - d. Fictitious names or signing name of another; penalty
      - e. Filing with false signatures; penalties
    - 3. Improper Payments to Prevent Petition Circulation and Filing
      - a. Soliciting or obtaining money or thing of value for inducing proponents to abandon petitions
      - b. Receipt by proponent of consideration for abandoning petitions; penalties
      - c. Buying of petitions from circulators; misdemeanor
    - 4. Threats and Theft to Prevent Petition Circulation and Filing
      - a. Threat to commit assault or battery or to damage property; misdemeanor
      - b. Taking petitions from circulators by force or stealth; misdemeanor
    - 5. Refusal of Circulators to Turn in Petitions
      - a. Failure to surrender petitions to proponents; penalties
    - 6. Misuse of Signatures on Petition
      - a. Use of signatures for other than qualification for ballot; misdemeanor
    - 7. False Affidavits Concerning Petitions
      - a. False affidavits; penalties
      - b. Public officers; false returns, certifications or affidavits
    - 8. Filing Petitions to Defeat an Initiative or Referendum
      - a. Misdemeanor
      - b. Void petitions; filing with intent to defeat expression of public will
    - 9. Misuse of Campaign Funds
      - a. Misappropriation; expenses within due and lawful execution of the trust; penalties
  - H. Obligations of Precinct Board
    - 1. Failure to fulfill duties; misdemeanor
- (Cal.Elec.Code § 18000)

## **COLORADO**

### **Election Offenses**

#### **A. General Provisions**

- 1. District attorney or attorney general to prosecute
- 2. Sufficiency of complaint--judicial notice
- 3. Immunity of witness from prosecution

15. Disclosing or identifying vote
16. Intimidation
17. Electioneering--removing and return of ballot
18. Liquor in or near polling place
19. Destroying, removing, or delaying delivery of election records
20. Penalty for destruction of supplies
21. Release of information concerning count
22. Employer's unlawful acts
23. Unlawfully giving or promising money or employment
24. Receipt of money or jobs
25. Defacing or removing abstract of votes
26. Penalty for neglect of duty--destruction of ballots--breaking seal
- G. Absentee Voting and Voting by New Residents
  1. Mailing other materials with absentee voter's ballot
  2. Absentee voter applications and deliveries outside county clerk and recorder's office
  3. Offenses relating to absentee voting

(C.R.S.A. § 1-13)

## **CONNECTICUT**

### **Prohibited Acts and Penalties**

- A. Failure to warn election
- B. Delay in counting or declaring vote
- C. Tampering with machine by election official
- D. False return
- E. Improper printing of ballot label
- F. Official neglect or fraud
- G. Fraudulent registration
- H. False swearing before registrar, moderator, board or State Elections Enforcement Commission
- I. Absentee ballots
- J. False statement in absentee balloting. Class D felony
- K. Fraudulent voting
- L. Primary or enrollment violations
- M. Decision of election officials no bar to prosecution
- N. Circulation of misleading instructions
- O. Influencing elector to refrain from voting
- P. Acts prohibited in elections, primaries, referenda, caucuses and conventions. Penalties
- Q. Employers' threats
- R. Interference with electors in voting
- S. Tampering with voting machine
- T. Arrest of accused
- U. Misrepresentation of contents of a petition

(C.G.S.A § 9. Ch. 151)

4. Perjury
  5. False certificates by officers
  6. Forgery
  7. Violation of duty
  8. False statements relating to candidates or questions related to electors—penalties—definitions
  9. Wagers with electors
  10. Penalties for election offenses
  11. Offenses relating to mail ballots
  12. Interference with distribution of election material
  13. Failure to comply with requirements of secretary of state
- B. Qualification and Registration of Electors
1. Interfering with or impeding registration
  2. Unlawful qualification as taxpaying elector
  3. Procuring false registration
  4. Adding names after registration closed
  5. County clerk and recorder signing wrongful registration
  6. Signature on registration record is proof of oath
  7. Deputy county clerk and recorder--influencing party affiliation
  8. High school deputy registrar--influencing party affiliation
- C. Political Party Organization
1. Fraud at precinct caucus, assembly, or convention
  2. Fraudulent voting in precinct caucus, assembly, or convention
  3. Offenses at precinct caucus, assembly, or convention
- D. Access to Ballot by Candidate
1. Bribery of petition signers
  2. Tampering with nomination papers--nomination petitions
  3. Defacing of petitions other than nominating petitions
- E. Notice and Preparation for Elections
1. Tampering with notices or supplies
- F. Conduct of Elections
1. Interference with election official
  2. Interfering with watcher
  - ✓3. Tampering with registration book, registration list, or pollbook
  - ✓4. Unlawfully refusing ballot or permitting to vote
  - ✓5. Voting by persons not entitled to vote—penalty
  6. Personating elector
  7. Delivering and receiving ballots at polls
  8. Inducing defective ballot
  - ✓9. Tampering with voting equipment
  10. Elected official not to handle electronic or electromechanical voting equipment or devices
  11. Voting in wrong precinct
  - ✓12. Residence--false information—penalty
  - ✓13. Voting twice—penalty
  - ✓14. Interference with voter while voting

## **DELAWARE**

### **Penal and Enforcement Provisions**

- A. Neglect of duty; corrupt or fraudulent conduct; penalty
- B. Wrongful registration; assault; riot; breach of peace; penalty
- C. Registration records; fraudulent entries; alterations, obliterations or omissions; loss; destruction; mutilation; secretion; false copies; ...
- D. Alcoholic liquor in registration places; penalty
- E. Intimidation of registration officers; penalty
- F. Notice to Attorney General of violations of registration laws
- G. Unauthorized entering of registration area; interference with registration; penalty

(DE ST TI 15 Ch. 23)

### **Criminal Offences**

#### **A. General Provisions**

- 1. Jurisdiction of Court
- 2. Prosecution by Attorney General; duty to report violations
- 3. Irregularities or defects in election as a defense
- 4. Honest belief as a defense
- 5. Application to school elections

#### **B. Particular Offenses**

- 1. Neglect of duty by department member; corrupt or fraudulent conduct; penalty
- 2. Refusal of inspector or judge of election to serve; penalty
- 3. Refusal of clerk of election to qualify or serve; penalty
- 4. Improper conduct of printer of ballots and ballot envelopes; penalty
- 5. Improper use of ballot or envelope; penalty
- 6. Tampering with voting machines; penalties
- 7. Unauthorized entering of voting room; penalties
- 8. Interference with election; penalties
- 9. Feigning a physical disability to obtain assistance in voting; penalty
- 10. Sequestering person in election room; penalty
- 11. Removal or destruction of election supplies or equipment or voting machines; penalty
- 12. Disclosures by election officers; penalty
- 13. Intimidation, persuasion or bribery by election officer; penalty
- 14. Inducing the making of distinguishing mark on ballot; penalty
- 15. Inducing election officers to violate election laws; penalty
- 16. Violations by officials; penalty
- 17. Bribery of person expecting to be election or registration officer; penalty
- 18. Fraudulent voting; penalty
- 19. False entries by clerk of election
- 20. Failure of election officer to perform duties
- 21. False count or certification by election officer
- 22. Fraudulent deposit or alteration of ballots or entering voting machine booth or casting vote; penalty

23. Willful neglect of duty by election officers
24. Stealing, destroying or secreting records; penalty
25. Perjury; subornation of perjury
26. Tampering with ballots or deceiving voters; penalty
27. Disobeying election officers; penalty
28. Breach of peace or violence on election day; penalty
29. Interference with election officer or challenger; penalty
30. Failure of inspector to preserve order
31. Stealing or destroying ballot box, ballot, poll list; penalty
32. Requiring unauthorized oath; penalty
33. Candidate for General Assembly not to make written pledge; penalty
34. Unauthorized release of absentee vote information; penalty

C. Offenses Carrying Civil Liability

1. Intimidation of election officers; penalty
2. Intimidation of electors; penalty
3. Liability of corporation or officers
4. Liability of stakeholder for paying election bet

(DE ST TI 15 Ch. 51)

**DISTRICT OF COLUMBIA**

Regulation of Elections

- A. Interference with registration and voting
- B. Corrupt election practices
- C. Candidacy for more than 1 office prohibited; multiple nominations; candidacy of officeholder for another office restricted

(DC ST § 1-1001.12, 1001.14-15)

**FLORIDA**

Violations; Penalties

- A. False swearing; submission of false voter registration information
- B. Consideration for registration; interference with registration; soliciting registrations for compensation; alteration of registration application
- C. Unauthorized use, possession, or destruction of voter information card
- D. False declaration to secure assistance in preparing ballot
- E. Fraud in connection with casting vote
- F. Vote selling
- G. Absentee ballots and voting; violations
- H. Violations; neglect of duty; corrupt practices
- I. Voting rights; deprivation of, or interference with, prohibited; penalty
- J. Corruptly influencing voting
- K. Voter intimidation or suppression prohibited; criminal penalties
- L. Absentee ballots and voting; violations
- M. Remuneration by candidate for services, support, etc.; penalty
- N. Threats of employers to control votes of employees
- O. Aiding, abetting, advising, or conspiring in violation of the code
- P. Failure to assist officers at polls
- Q. Neglect of duty by sheriff or other officer



- R. Intermingling ballots
  - S. Unqualified electors willfully voting
  - T. Voting fraudulent ballot
  - U. Voting in person after casting absentee ballot
  - V. Casting more than one ballot at any election
  - W. Petitions; knowingly signing more than once; signing another person's name or a fictitious name
  - X. Using stickers or rubber stamps or carrying certain items in voting booth; penalty
  - Y. Ballot not to be seen, and other offenses
  - Z. Changing electors' ballots
  - AA. Stealing and destroying records, etc., of election
  - BB. Disclosing how elector votes
  - CC. Penalty for assuming name
  - DD. Penalty for destroying ballot or booth, etc.
  - EE. False or malicious charges against, or false statements about, opposing candidates; penalty
  - FF. Inspectors refusing to allow watchers while ballots are counted
  - GG. Voting system; unlawful possession; tampering
  - HH. Political activities of state, county, and municipal officers and employees
  - II. Supervisor of elections; delivery of books to successor
  - JJ. Witnesses as to violations
  - KK. Violations not otherwise provided for
  - LL. Fraudulent registration and illegal voting; investigation
  - MM. Grand juries; special investigation
- (F.S.A. § 104)

## **GEORGIA**

### **Miscellaneous Offenses**

- A. False statements
- B. False registration
- C. Insertion and alteration of entries in documents; removal; refusal to deliver
- D. False signatures and statements in nomination petitions
- E. Nomination petitions; certificates and papers; destruction; fraudulent filing; suppression
- F. False statement in connection with notices of candidacy and qualifying for party nomination
- G. Interference with primaries and elections
- H. Intimidation of electors
- I. Giving unlawful assistance in voting
- J. Interfering with poll officers
- K. Giving or receiving money or gifts for purpose of registering as voter, voting, or voting for particular candidate
- L. Unlawful voting
- M. Repeat voting at primaries and elections
- N. Unlawful absentee voting

- O. Unlawful possession of ballots
  - P. Counterfeit and facsimile ballots, ballot cards or ballot labels
  - Q. Destroying or delaying delivery of ballots
  - R. Removing ballots
  - S. Prying into ballots and ballot cards
  - T. Receiving unlawful assistance in voting
  - U. Tampering with voting machines
  - V. Unauthorized possession of voting machine key
  - W. Tampering with vote recorders or tabulating machines
  - X. Altering, modifying, or changing voting equipment
  - Y. Destroying, defacing or removing notices, et cetera
  - Z. Refusal to administer oath; acting without being sworn
  - AA. Refusal to permit inspection of papers; destruction or removal; superintendents
  - BB. Refusal to permit inspection of papers; destruction or removal; Secretary of State
  - CC. Frauds by poll officers
  - DD. Count and return of votes
  - EE. Omissions by poll officers
  - FF. Poll officers permitting unregistered persons to vote; refusing to permit qualified electors to vote; permitting unauthorized assistance of elector
  - GG. Poll officers permitting unlawful assistance
  - HH. Failure to keep and return record of assisted voters
  - II. Law enforcement officer; failure to quell disturbances at polls; hindering or delaying poll officers and others
  - JJ. Offenses by printers of ballots
  - KK. Failure to perform duty
  - LL. Hindering or delaying performance of duty
  - MM. Punishment for misdemeanors
  - NN. Punishment for felonies
  - OO. Use of list of electors for commercial purposes
  - PP. Soliciting persons to register to vote
  - QQ. Compensation for soliciting persons to register to vote based upon number of persons registered
  - RR. Conspiracy to commit election fraud; violations
- (Ga. Code Ann., § 21 Ch. 2 Art.15)

## **HAWAII**

### **Election Offenses**

- A. Classes of offenses
  - B. Election frauds
  - C. Voter fraud
  - D. Penalties; disqualification for, removal from office; reports of conviction to chief election officer
  - E. Misdemeanors
- (HI ST § 19)

## **IDAHO**

## **ILLINOIS**

### **Offenses**

#### **A. Campaign Violations**

1. Defacing, falsifying, or destroying declarations, requests, petitions, or certificates
2. Printing, publishing or distribution of slate during primary campaign without authority
3. Circulation or publication of anonymous campaign material
4. Solicitation, challenge, or performance of election function by state police department civilian employee, police officer or firefighter
5. Collection, receipt or disbursement of money or property by committee without appointment of treasurer
6. Excess contributions by corporation or labor organization
7. Acceptance of contributions in excess of permitted amounts by certain judges
8. Contributions in the name of another person
9. Filing fraudulent reports
10. Failure to file required report
11. Commingling committee funds with personal funds
12. Personal use of committee funds

#### **B. Vote Fraud**

1. Conspiracy to submit false application for registration or to vote illegally; paying individual to vote
2. Fraudulent application for registration or procurement of registration
3. Absentee ballot fraud
4. Fraudulent subscription of another person's name to affidavit of registration or absentee ballot
5. Registering to vote more than once
6. Destruction or failure to file or deliver absentee ballot application or registration affidavit or form after execution
7. Unauthorized release or removal of registration materials from circuit court office
8. Withholding information or furnishing false information to poll taker; return of false names or names of deceased persons
9. Return of ineligible person, fictitious or deceased's names by poll taker
10. Unregistered or unauthorized voting
11. Voting by ineligible persons
12. Voting in other precincts
13. Voting or applying to vote in false name and own name
14. Hiring or soliciting person to vote in precinct where person is not voter
15. Precinct officer or public official allowing ineligible voters or unauthorized procedure
16. Unauthorized delivery of ballots

17. Ballots; fraudulent application, showing, examination, receipt, delivery, possession, or completion or signing
  18. Marking ballot to indicate to another person how voter has voted
  19. Disclosure of vote
  20. Forgery of official ballot endorsement; printing or circulating imitation ballot
  21. Deceptive registration of vote
  22. Fraudulent inducement to vote other than as intended
  23. False representation of ballot to non-English speaking voter
  24. Opening, destruction or unauthorized delivery of ballots by custodian of ballots
  25. Removal or destruction of ballots; false entries in poll book; false tallying
  26. Marking or defacing ballots by precinct election board member or authorized election personnel
  27. Tampering with ballot container or contents
  28. Causing vote to be incorrectly taken down; false statement, certificate, or return
  29. Fraudulent alteration of election return; intentional destruction of poll book or tally; fraudulent alteration of vote as returned
  30. Inspecting voting system without authorization
  31. Voting at multiple town conventions
- C. Interference with Free and Equal Elections
1. False, fictitious, or fraudulent registration applications or ballots
  2. Failure to cast or return ballot in authorized manner
  3. Interference with watcher's duties
  4. Obstruction of, interference with, or injury of election officer or voter
  5. Tampering with voting system
  6. Allowing inaccurately adjusted voting system to be used
  7. Removal, change, or mutilation of voting system for purpose of deceiving voter
  8. Damaging, disarranging, or tampering with voting system
  9. Failure to receive vote of legal voter
  10. Removal, defacing or destruction of supplies, instruction cards from voting booth; removal or destruction of voting booth
  11. Tampering with marking device, ballot or record or equipment; interference with operation or secrecy of voting
  12. Leaving poll with ballot or ballot marking device
  13. Removal of ballot or marking device from polls; possession outside polls
  14. Printers; unauthorized printing or delivery of ballots
  15. Unauthorized entries at polls
  16. Electioneering
  17. Inducement of votes by board member or precinct election officer prohibited
  18. Actions to unlawfully influence voter or candidate

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19. Inducing votes by gift or offer to compensate
  20. Acceptance or solicitation of compensation to induce or procure votes
  21. False or fraudulent absentee ballot applications or voter registration applications
  22. Influencing political opinions or actions of employees in the workplace
  23. Voter intimidation
  24. Poll list maintenance violations
  25. Poll list use violations
- D. Procedural Violations by Election Officers
1. Unlawfully serving as precinct election board member
  2. Inspectors; negligent or knowing failure to appear at election board's office
  3. Omission in performance of required duties
  4. Voter registration information violations
  5. Allowing observance of voter preparing ballot
  6. Deposit of ballots not initialed or ballots externally defaced
  7. Disclosure of how voter voted or information regarding appearance of ballot voted
  8. Opening or marking ballot or ascertaining how voter voted
  9. Disclosure of votes or electioneering
  10. Provision of information concerning absentee vote count before closing of polls
- E. Enforcement Provisions
1. Affidavit against illegal voter
  2. Affidavits; packaging, sealing, endorsing and delivery to grand jury; inquiry by grand jury
  3. Duty to report violations to prosecuting attorney and violator; presentation to grand jury
  4. Prosecution of violators
  5. Indictment or information; allegations
  6. Criminal prosecutions; self-incrimination defense not available to witness
  7. Informants; immunity
  8. Employment of persons convicted of vote fraud; reemployment; injunctions and civil penalties
- F. Election Profiteering
1. Grant of request for voter information to be used in prohibited manner; violations
  2. Use of voter registration information for solicitation; infraction; misdemeanor

(IN ST 3-14)

## **IOWA**

### **Election Misconduct**

- A. Title and purpose--election officials defined

- B. Election misconduct in the first degree
  - C. Election misconduct in the second degree
  - D. Election misconduct in the third degree
  - E. Election misconduct in the fourth degree
  - F. Technical infractions—notice
- (I.C.A. § 39A)

## **KANSAS**

### **Election Crimes**

- A. Corrupt political advertising; penalty
  - B. Definitions
  - C. Election bribery
  - D. Bribery to induce signing of nomination papers
  - E. Election perjury
  - F. Election forgery
  - G. Disorderly election conduct.
  - H. Possessing false or forged election supplies
  - I. Intimidation of voters
  - J. Voting without being qualified
  - K. Bribery of an election official
  - L. Bribe acceptance by an election official
  - M. Misconduct of an election officer
  - N. Election fraud by an election officer
  - O. Election suppression
  - P. Voter registration suppression
  - Q. Unauthorized voting disclosure
  - R. Election tampering
  - S. False impersonation as party officer
  - T. Voting machine fraud
  - U. Printing and circulating imitation ballots
  - V. Marking ballots to identify
  - W. Destruction of election supplies
  - X. Destruction of election papers
  - Y. Electioneering
  - Z. False impersonation of a voter
  - AA. Forfeiture of office or employment upon conviction
- (K.S.A. § 25-24)

## **KENTUCKY**

### **Election Offenses and Prosecutions**

- A. Definitions
- B. Clerk making or permitting wrongful registration, or failing or refusing to deliver copies of registration records
- C. Wrongful registration
- D. Alteration, suppression, mutilation, or destruction of registration record; making or using false or fraudulent record

- E. Interfering with registration
  - F. Alteration, mutilation, or suppression of nomination papers
  - G. Forgery of nomination papers
  - H. Clerk's failure to place candidate's name on ballot
  - I. Printer's violation of duty in printing ballots
  - J. Removal or destruction of election supplies or booths
  - K. Unauthorized possession of key to voting machine; tampering with, injuring, or destroying ballot labels or voting machines
  - L. Sheriff's failure to hold election or perform other election duties
  - M. Election officer's refusal to admit challenger
  - N. Preventing voter from casting ballot; interfering with election
  - O. False personation of a voter; nonresident or unqualified person voting
  - P. Receipt of illegal vote or rejection of legal vote by election officer
  - Q. Disobeying election officer's command
  - R. Removing or tampering with ballots
  - S. Making or receiving expenditures for vote, for withholding of vote, or for signing a petition to have public question on ballot; definition of "expenditure"; procedures for paying for transportation of voters; applicability of KRS 502.020
  - T. Prohibition against paying compensation based upon number or characteristics of voters registered
  - U. Providing another with intoxicants on election day
  - V. Denial of rights of inspectors by county board of elections
  - W. Alteration, suppression, or destruction of stub book, return, or certificate of election
  - X. Violation of law or failure to perform duty by member of board of elections
  - Y. Intimidation of election officer or board of elections
  - Z. Violation of duties for which no other penalty provided
  - AA. Advising or assisting violation of election laws
  - BB. Prohibitions against holding elective office
  - CC. Irregularity or defect in conduct of election no defense
  - DD. Applicability of penalties for regular elections to primaries and to elections for United States Senator
  - EE. Report by election officers of violations; arrest of offenders
  - FF. Report to grand jury on election officials inexcusably absent; subject to prosecution
  - GG. Grand jury may compel testimony as to violation of election laws
  - HH. Refusal to produce evidence of corrupt practices when summoned by grand jury a Class A misdemeanor
  - II. Evidence required to support conviction for violation of election laws
  - JJ. Witness not exempted from giving incriminating testimony; immunity except from perjury charge
  - KK. Limitation of prosecutions
- (KRS § 119)

## LOUISIANA

## **MAINE**

## **SOUTH DAKOTA**

## **TENNESSEE**

### **Prohibited Practices Generally**

1. Nominating meetings and elections; interference
2. Violation of title
3. Interference with person's duties or rights
4. Misrepresentations
5. Perjury
6. Violations; procurement or inducement
7. Improper registration of voting
8. Improper possession of electronic supplies
9. False entries on election documents
10. Unlawful assistance of voter
11. Interference with marked ballots
12. Display of campaign materials within posted boundaries
13. Campaign communications; identification of sponsor
14. Candidate making exchange for support
15. Demanding candidates support in exchange for support
16. Exchanges with candidates; penalties
17. Candidate's exchanges; permissible expenditures
18. Bribery; election officials
19. Bribery; voters
20. Bribery; acceptance by voter
21. Bribery; penalty
22. Betting; on election
23. Betting; candidate betting with a voter
24. Betting; to procure challenge or to prevent voting
25. Corporate funds; campaign contributions
26. Directing employees on voting
27. Threatening employees
28. Grand jury witness; immunity
29. Defenses; irregularities
30. Expenditures permitted
31. Corporations; penalties
32. Fines; school fund
33. False campaign literature
34. Suffrage for persons convicted of infamous crimes
35. Advertising material; public utility property

### **Offense by Public Officers**

1. Interference with election or nomination
2. Soliciting contributions from recipients of government benefits
3. Promises of government benefits



4. Deprivation of government benefits
  5. State-owned property used for political purposes
  6. Political activities interfering with state business
- (Const. Art 2. §19-01)

## **TEXAS**

Nothing in statutes regarding election crimes.

## **UTAH**

### **Offenses Involving Election Administration**

1. Willful neglect of duty or corrupt conduct
  2. Destroying or concealing ballots
  3. Neglect or refusal to deliver ballots or returns
  4. Officer or watcher revealing vote
  5. Damage, alteration or theft of election equipment
- (U.C.A. §20A-400.5)

## **VERMONT**

### **Offenses Against the Purity of Elections**

1. Presiding officer receiving illegal vote
  2. Counting and turning ballot boxes before proper time
  3. Nonperformance of duty by public officer
  4. Casting more than one ballot
  5. Voting in one or more place
  6. Voter omitted from list; voting in another town
  7. Perjury before board
  8. Producing change in list wrongfully
  9. False answer as to right to vote
  10. Unqualified person voting
  11. Fraudulent voting
  12. Aiding unqualified voter to vote
  13. Undue influence
  14. Using intoxicating liquor to influence voters
  15. Destroying lists; hindering voting
  16. Offenses applying to primary elections
  17. Destroying certificates of nomination
- (VT ST T. 35 § 1931)

## **VIRGINIA**

### **Election Offenses and Penalties**

1. Bribery, intimidation of election officers
2. Willful neglect or corrupt conduct
3. Interference with registration
4. Destruction of, or failure to mail or deliver voter registration application
5. Unlawful disclosure or use of social security number
6. Campaigning at registration locations

7. Illegal voting and registrations
  8. Bribery, intimidation of person receiving ballot
  9. Advice or assistance in ballot casting
  10. Soliciting or accepting bribe to influence or procure vote
  11. Selling, giving away or counterfeiting ballots
  12. Stealing or tampering with ballot containers
  13. Unauthorized duplication or possession of voting equipment key or electronic activation device.
  14. Ballot not to be carried away
  15. Offenses as to absent voters
  16. False statements and penalties
  17. Immunity of witnesses
  18. Complaints and allegations of election law offenses
- (VA ST T. 24-1000 to 1019)

## **WASHINGTON**

### **Crimes and Penalties**

1. Voting, registration irregularities
2. Violations by officers
3. Penalty
4. Political advertising, removing or defacing
5. Tampering with registration form, absentee or provisional ballots
6. Registration officials' violations
7. Disenfranchisement discrimination
8. Voter violations
9. Unqualified registration
10. Misuse, alteration of registration data base

### **Petitions and Signatures**

11. Violations by officers
12. Violations—corrupt practices
13. Violations by signers
14. Petitions—improperly signing
15. Duplication of names
16. Paid petition solicitors

(Ch. 29A.84.0101-84.740)

## **WEST VIRGINIA**

### **Offenses and Penalties**

1. Unlawful printing, possession or delivery of ballots
2. False swearing
3. Commissioner's failure to procure or return supplies
4. Destruction or removal of election supplies
5. Unauthorized presence in election room; three hundred foot limit
6. Wrongful refusal or allowance of votes; malicious or frivolous challenges
7. Distinguishing marks on ballots
8. Other unlawful acts at polling places

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9. Disorder at polls; failure to assist in preventing disorder
  10. Failure to make returns
  11. Improper influence and bribery by candidates
  12. Buying or selling vote unlawful
  13. Unlawful acts by corporations
  14. Receiving or soliciting bribes by voters
  15. Illegal voting; deceiving voters
  16. Unlawful voting in primary elections
  17. Violations concerning absent voters' ballots
  18. Obstructing employees' freedom to vote
  19. Wagering or betting on elections
  20. Punishment where penalty not described or where failure to perform duty not specifically made an offense
- (WV ST Ch. 3, Art 9)

## **WISCONSIN**

Prohibited election practices include:

1. Campaigning restrictions
2. Posting and distributing of election-related material
3. Communication of political messages
4. False representation affecting elections
5. Election restrictions on employers
6. Denial of government benefits
7. Election threats
8. Election bribery
9. Election fraud

(W.S.A. 12)

## **WYOMING**

Felony offenses include:

1. Registration offenses
2. Unlawful opening of a ballot box
3. Unlawful opening of a voting machine
4. Unlawful possession of a key
5. False voting
6. Falsifying election documents
7. False swearing
8. Offering a bribe
9. Accepting a bribe
10. Intimidation

(Laws 1973, ch. 251, § 1; W.S. 1957, § 22.1-406.)

030887



U.S. ELECTION ASSISTANCE COMMISSION  
1225 NEW YORK AVENUE, N.W., SUITE 1100  
WASHINGTON, D.C. 20005

OFFICE OF THE CHAIRMAN

October 19, 2006

Ralph G. Neas  
President, People for the American Way Foundation  
2000 M Street, NW  
Suite 400  
Washington, DC 20036

**Via Facsimile Transmission ONLY**  
**202-293-2672**

RE: October 18, 2006 Letter

Dear Mr. Neas:

Your letter of October 18, 2006 requests the release of EAC's Voter Fraud and Intimidation Report. I would like to take this opportunity to clarify the purpose and status of this study.

In late 2005, EAC hired two consultants for the purpose of assisting EAC with two things: 1) developing a uniform definition of the phrase voter fraud, and 2) making recommendations on how to further study the existence, prosecution, and means of deterring such voter fraud. In May 2006, a status report on this study was given to the EAC Standards Board and EAC Board of Advisors during their public meetings. During the same week, a working group convened to react to and provide comment on the progress and potential conclusions that could be reached from the work of the two consultants.

The conversation at the working group meeting was lively on the very points that we were trying to accomplish as a part of this study, namely what is voter fraud and how do we pursue studying it. Many of the proposed conclusions that were suggested by the consultants were challenged by the working group members. As such, the consultants were tasked with reviewing the concerns expressed at the working group meeting, conducting additional research as necessary, and providing a draft report to EAC that took into account the working group's concerns and issues.

That draft report is currently being vetted by EAC staff. EAC will release a final report from this study after it has conducted a review of the draft provided by the consultants. However, it is important to remember the purpose of this study – finding a uniform definition of voter fraud and making recommendations on how to study the existence, prosecution and deterrence of voter fraud -- as it will serve as the basis of the EAC report on this study.

Thank you for your letter. You can be assured that as soon as a final report on the fraud and intimidation study is available, a copy will be made available to the public.

Sincerely,

Paul S. DeGregorio  
Chairman

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**FACSIMILE TRANSMITTAL SHEET**

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**FROM: RALPH G. NEAS**  
PRESIDENT, PEOPLE FOR THE AMERICAN WAY FOUNDATION

**DATE: 10/18/06**

**TOTAL NO. OF PAGES INCLUDING COVER: 3**

**RE: REPORT COMMISSIONED BY THE EAC ON VOTER FRAUD**

☐ URGENT    ☒ FOR REVIEW    ☐ PLEASE COMMENT    ☐ PLEASE REPLY    ☐ PLEASE RECYCLE

**NOTES/COMMENTS:**

Cc: USPS Mail

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2000 M STREET, NW ♦ SUITE 400 ♦ WASHINGTON, DC 20036  
TELEPHONE 202-467-4999 ♦ FAX 202-293-2672 ♦ EMAIL pfaw@pfaw.org

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October 18, 2006

Chairman Paul DeGregorio  
Commissioner Donetta L. Davidson  
Commissioner Gracia M. Hillman  
United States Election Assistance Commission  
1225 New York Avenue N.W., Suite - 1100  
Washington, DC 20005  
Fax: (202) 566-3127

Dear Commissioners,

On October 11<sup>th</sup>, *USA Today* published an article describing the report commissioned by the EAC on voter fraud. We write today to urge the EAC to release this report.

As a 25 year old civil rights and civil liberties organization, People For the American Way Foundation (PFAWF) and our sister organization, People For the American Way (PFAW) have long been dedicated to ensuring the integrity of our elections. In particular in the years since the 2000 election, PFAWF and other principle partners such as the NAACP and the Lawyers' Committee for Civil Rights Under Law, have carried out a program called Election Protection to ensure that all eligible voters are able to vote and have that vote counted as cast.

We know that voter fraud and intimidation occur- we've seen the long lines, the erroneous purges, the misleading flyers and phone calls. And yet there seems to be little attention to these matters on the state and federal level.

Instead, a disproportionate amount of time and energy are spent on measures that purport to curb voter fraud by requiring voters to produce proof of citizenship and identity to vote. In actuality, these measures do little to secure the elections and much to disenfranchise otherwise eligible voters. Indeed we are weeks away from an election where thousands of eligible voters may be disenfranchised by overly restrictive voter identification laws. That presents a real threat to the integrity of our elections and the health of our democracy.

The report that the EAC commissioned from voting experts would make a vitally important contribution to the national discourse on the reality of voter fraud. In light of the numerous claims regarding the prevalence of voter fraud, this report provides a much

needed analysis about the state of our electoral process. While media reports indicate that this tax-payer funded report is final, even if there are outstanding concerns within the EAC, we implore you to move forward with releasing the report as is, and to hold a public hearing to address any potential issues. Again, the importance of the information in this report is paramount and the public deserves such full disclosure. The report should be released immediately so that those who are concerned about ensuring the integrity of elections can benefit from its findings.

Sincerely,



Ralph G. Neas

President, People For the American Way Foundation

Cc: Senate Majority Leader Bill Frist  
Senate Minority Leader Harry Reid  
Senator Trent Lott, Chair, Senate Rules and Administration  
Senator Chris Dodd, Ranking Member, Senate Rules and Administration  
House Majority Leader John Boehner  
House Minority Leader Nancy Pelosi  
Representative Vernon Ehlers, Chair, House Administration  
Representative Juanita Millender-McDonald, Ranking Member, House Administration

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UNITED STATES COMMISSION ON CIVIL RIGHTS

624 NINTH STREET, NW, WASHINGTON, DC 20425

WWW.USCCR.GOV

MICHAEL YAKI  
COMMISSIONER

October 17, 2006

The Honorable Gerald Reynolds  
Chair, United States Commission on Civil Rights  
624 9<sup>th</sup> Street, N.W.  
Washington, DC 20425

RE: Elections Assistance Commission Report

VIA ELECTRONIC MAIL

Dear Mr. Chairman

I am writing to urge you and my fellow Commissioners to exercise our Congressionally-authorized subpoena power to compel the production of the report on voting fraud that the United States Election Assistance Commission ("EAC") refuses to release. It was clearly evident during our briefing last week on Voter Fraud and Intimidation that the results of the EAC report could have a significant impact on the quality and quantitative analysis of any briefing report that might be issued by the Commission.

According to an article in the October 11<sup>th</sup> edition of USA Today, "the bipartisan report by two consultants to the election commission casts doubt on the problem those laws are intended to address." Indeed, "there is widespread but not unanimous agreement that there is little polling-place fraud, or at least much less than is claimed, including voter impersonation, 'dead' voters, non-citizen voting and felon voters" according to the article. Further, the USA Today article states that the report, "prepared by Tova Wang, an elections expert at the Century Foundation think tank, and Job Serebrov, an Arkansas attorney, says most fraud occurs in the absentee ballot process, such as through coercion or forgery."

Just based on this news article, the report has information clearly germane to our briefing and subsequent analysis of the testimony provided. I believe that in carrying out our Congressional mandate, the need to have access to and analyze the Election Assistance Commission report is a necessary prerequisite to an unbiased and informed report on Voter Fraud.

It is my understanding that the Chair has the authority under law to sign a subpoena on his own accord or, alternatively to seek a vote of the Commission to issue said subpoena. I believe the subpoena would be very short and direct: the production of the suppressed report.



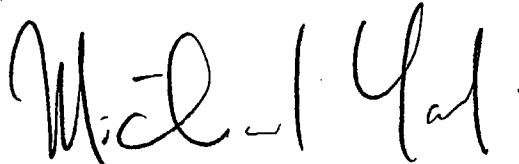
Page 2

Letter from Commissioner Yaki to Chair Reynolds

I respectfully request that the Chair immediately issue a subpoena or, in the alternative, conduct an immediate notational vote on the matter of issuing a subpoena to compel production of the report.

Thank you for your time and attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Yaki". The signature is fluid and cursive, with the first name "Michael" and last name "Yaki" clearly distinguishable.

MICHAEL YAKI

Commissioner

United States Commission on Civil Rights



U.S. ELECTION ASSISTANCE COMMISSION

1225 NEW YORK AVENUE, N.W., SUITE 1100  
WASHINGTON, D.C. 20005

OFFICE OF THE CHAIRMAN

October 19, 2006

Ralph G. Neas  
President, People for the American Way Foundation  
2000 M Street, NW  
Suite 400  
Washington, DC 20036

**Via Facsimile Transmission ONLY**  
**202-293-2672**

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In late 2005, EAC hired two consultants for the purpose of assisting EAC with two things: 1) developing a uniform definition of the phrase voter fraud, and 2) making recommendations on how to further study the existence, prosecution, and means of deterring such voter fraud. In May 2006, a status report on this study was given to the EAC Standards Board and EAC Board of Advisors during their public meetings. During the same week, a working group convened to react to and provide comment on the progress and potential conclusions that could be reached from the work of the two consultants.

The conversation at the working group meeting was lively on the very points that we were trying to accomplish as a part of this study, namely what is voter fraud and how do we pursue studying it. Many of the proposed conclusions that were suggested by the consultants were challenged by the working group members. As such, the consultants were tasked with reviewing the concerns expressed at the working group meeting, conducting additional research as necessary, and providing a draft report to EAC that took into account the working group's concerns and issues.

That draft report is currently being vetted by EAC staff. EAC will release a final report from this study after it has conducted a review of the draft provided by the consultants. However, it is important to remember the purpose of this study -- finding a uniform definition of voter fraud and making recommendations on how to study the existence, prosecution and deterrence of voter fraud -- as it will serve as the basis of the EAC report on this study.

Thank you for your letter. You can be assured that as soon as a final report on the fraud and intimidation study is available, a copy will be made available to the public.

Sincerely,

Paul S. DeGregorio  
Chairman

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## **VOTING FRAUD-VOTER INTIMIDATION WORKING GROUP MEETING**

**Thursday, May 18, 2006**

**1:00 PM - 5:30 PM**

**U.S. Election Assistance Commission  
1225 New York Avenue, N.W., 11<sup>th</sup> Floor  
Washington, D.C. 20005**

### **AGENDA**

1:00 PM - 1:30 PM	Introduction
	EAC Authority Overview and Purpose of Current Project Purpose and Members of the Working Group Related EAC Research
1:30 PM - 2:00 PM	Review of Preliminary Research
	Literature & Reports Interviews News Articles Court Cases
2:00 PM - 3:15 PM	Definition & Findings from Current Project Research
3:15 PM - 3:30 PM	Break
3:30 PM - 5:00 PM	Ideas for Future EAC Activities
	Recommended Research Methodologies Consultant Recommendations Working Group Ideas
5:00 PM - 5:30 PM	EAC Next Steps

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## **Voting Fraud-Voter Intimidation Working Group**

### **The Honorable Todd Rokita**

Indiana Secretary of State

Member, EAC Standards Board and the Executive Board of the Standards Board

### **Kathy Rogers**

Georgia Director of Elections, Office of the Secretary of State

Member, EAC Standards Board

### **J.R. Perez**

Guadalupe County Elections Administrator, TX

### **Barbara Arnwine**

Executive Director, Lawyers Committee for Civil Rights Under Law

Leader of Election Protection Coalition

*(To be represented at May 18, 2006 meeting by Jon M. Greenbaum, Director of the Voting Rights Project for the Lawyers Committee for Civil Rights Under Law)*

### **Robert Bauer**

Chair of the Political Law Practice at the law firm of Perkins Coie, DC

National Counsel for Voter Protection, Democratic National Committee

### **Benjamin L. Ginsberg**

Partner, Patton Boggs LLP

Counsel to national Republican campaign committees and Republican candidates

### **Mark (Thor) Hearne II**

Partner-Member, Lathrop & Gage, St Louis, MO

National Counsel to the American Center for Voting Rights

### **Barry Weinberg**

Former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S.

Department of Justice

*EAC Invited Technical Advisor:*

### **Craig Donsanto**

Director, Election Crimes Branch, U.S. Department of Justice

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## **Defining Election Fraud**

Election fraud is any intentional action, or intentional failure to act when there is a duty to do so, that corrupts the election process in a manner that can impact on election outcomes. This includes interfering in the process by which persons register to vote; the way in which ballots are obtained, marked, or tabulated; and the process by which election results are canvassed and certified.

Examples include the following:

- falsifying voter registration information pertinent to eligibility to cast a vote, (e.g. residence, criminal status, etc);
- altering completed voter registration applications by entering false information;
- knowingly destroying completed voter registration applications (other than spoiled applications) before they can be submitted to the proper election authority;
- knowingly removing eligible voters from voter registration lists, in violation of HAVA, NVRA, or state election laws;
- intentional destruction by election officials of voter registration records or balloting records, in violation of records retention laws, to remove evidence of election fraud;
- vote buying;
- voting in the name of another;
- voting more than once;
- coercing a voter's choice on an absentee ballot;
- using a false name and/or signature on an absentee ballot;
- destroying or misappropriating an absentee ballot;
- felons, or in some states ex-felons, who vote when they know they are ineligible to do so;
- misleading an ex-felon about his or her right to vote;
- voting by non-citizens who know they are ineligible to do so;
- intimidating practices aimed at vote suppression or deterrence, including the abuse of challenge laws;
- deceiving voters with false information (e.g.; deliberately directing voters to the wrong polling place or providing false information on polling hours and dates);
- knowingly failing to accept voter registration applications, to provide ballots, or to accept and count voted ballots in accordance with the Uniformed and Overseas Citizens Absentee Voting Act;
- intentional miscounting of ballots by election officials;
- intentional misrepresentation of vote tallies by election officials;

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- acting in any other manner with the intention of suppressing voter registration or voting, or interfering with vote counting and the certification of the vote.

Voting fraud does not include mistakes made in the course of voter registration, balloting, or tabulating ballots and certifying results. For purposes of the EAC study, it also does not include violations of campaign finance laws.

## **Existing Literature Reviewed**

### **Reports**

The Long Shadow of Jim Crow, People for the American Way and the NAACP

The New Poll Tax, Laughlin McDonald

Wisconsin Audit Report, Voter Registration Elections Board

Preliminary Findings, Milwaukee Joint Task Force Investigating Possible Election Fraud

Building Confidence in U.S. Elections, National Commission on Federal Election Reform (Carter/Baker Report)

Response to the Report of the 2005 Commission on Federal Election Reform (Carter/Baker Report), The Brennan Center and Professor Spencer Overton

Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?, Chandler Davidson

A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law, Alec Ewald

Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election, American Center for Voting Rights

America's Modern Poll Tax, The Advancement Project

Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General, The Brennan Center and Professor Michael McDonald

Democracy at Risk: The November 2004 Election in Ohio, Democratic National Committee

Department of Justice Public Integrity Reports 2002, 2003, 2004

Prosecution of Election Fraud under United States Federal Law, Craig Donsanto

Election Protection 2004, Election Protection Coalition

The Federal Crime of Election Fraud, Craig Donsanto

Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote, General Accounting Office

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Securing the Vote: An Analysis of Election Fraud, Lori Minnite

Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections, People for the American Way, NAACP, Lawyers Committee for Civil Rights

### **Books**

Stealing Elections, John Fund

Steal this Vote: Dirty Elections and the Rotten History of Democracy in American, Andrew Gumbel

Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004, Tracey Campbell

A Funny Thing Happened on the Way to the White House, David E. Johnson and Jonny R. Johnson

Fooled Again, Mark Crispin Miller

### **Legal**

*Indiana Democratic Party vs. Rokita*

*Common Cause of Georgia vs. Billup*

U.S. Department of Justice Section 5 Recommendation Memorandum (Georgia voter identification)



## Interviews

### Common Themes

- There is virtually universal agreement that absentee ballot fraud is the biggest problem, with vote buying and registration fraud coming in after that. The vote buying often comes in the form of payment for absentee ballots, although not always. Some absentee ballot fraud is part of an organized effort; some is by individuals, who sometimes are not even aware that what they are doing is illegal. Voter registration fraud seems to take the form of people signing up with false names. Registration fraud seems to be most common where people doing the registration were paid by the signature.
- There is widespread but not unanimous agreement that there is little polling place fraud, or at least much less than is claimed, including voter impersonation, "dead" voters, noncitizen voting and felon voters. Those few who believe it occurs often enough to be a concern say that it is impossible to show the extent to which it happens, but do point to instances in the press of such incidents. Most people believe that false registration forms have not resulted in polling place fraud, although it may create the perception that vote fraud is possible. Those who believe there is more polling place fraud than reported/investigated/prosecuted believe that registration fraud does lead to fraudulent votes. Jason Torchinsky from the American Center for Voting Rights is the only interviewee who believes that polling place fraud is widespread and among the most significant problems in the system.
- Abuse of challenger laws and abusive challengers seem to be the biggest intimidation/suppression concerns, and many of those interviewed assert that the new identification requirements are the modern version of voter intimidation and suppression. However there is evidence of some continued outright intimidation and suppression, especially in some Native American communities. A number of people also raise the problem of poll workers engaging in harassment of minority voters. Other activities commonly raised were the issue of polling places being moved at the last moment, unequal distribution of voting machines, videotaping of voters at the polls, and targeted misinformation campaigns.
- Several people indicate -- including representatives from DOJ -- that for various reasons, the Department of Justice is bringing fewer voter intimidation and suppression cases now and is focusing on matters such as noncitizen voting, double voting and felon voting. While the civil rights section continues to focus on systemic patterns of malfeasance, the public integrity section is focusing now on individuals, on isolated instances of fraud.
- The problem of badly kept voter registration lists, with both ineligible voters remaining on the rolls and eligible voters being taken off, remains a common concern. A few people are also troubled by voters being on registration lists in two states. They said that there was no evidence that this had led to double voting, but it opens the door to the possibility. There is great hope that full implementation of the new requirements of HAVA -- done well, a major caveat -- will reduce this problem dramatically.

Common Recommendations:

- Many of those interviewed recommend better poll worker training as the best way to improve the process; a few also recommended longer voting times or voting on days other than election day (such as weekends) but fewer polling places so only the best poll workers would be employed
- Many interviewed support stronger criminal laws and increased enforcement of existing laws with respect to both fraud and intimidation. Advocates from across the spectrum expressed frustration with the failure of the Department of Justice to pursue complaints.
  - With respect to the civil rights section, John Tanner indicated that fewer cases are being brought because fewer are warranted – it has become increasingly difficult to know when allegations of intimidation and suppression are credible since it depends on one's definition of intimidation, and because both parties are doing it. Moreover prior enforcement of the laws has now changed the entire landscape – race based problems are rare now. Although challenges based on race and unequal implementation of identification rules would be actionable, Mr. Tanner was unaware of such situations actually occurring and the section has not pursued any such cases.
  - Craig Donsanto of the public integrity section says that while the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate claims of fraud, the number of cases the department is investigating and the number of indictments the section is pursuing are both up dramatically. Since 2002, the department has brought more cases against alien voters, felon voters and double voters than ever before. Mr. Donsanto would like more resources so it can do more and would like to have laws that make it easier for the federal government to assume jurisdiction over voter fraud cases.
- A couple of interviewees recommend a new law that would make it easier to criminally prosecute people for intimidation even when there is not racial animus.
- Several advocate expanded monitoring of the polls, including some associated with the Department of Justice.
- Almost everyone hopes that administrators will maximize the potential of statewide voter registration databases to prevent fraud
- Challenge laws, both with respect to pre-election day challenges and challengers at the polls, need to be revised by all states to ensure they are not used for purposes of wrongful disenfranchisement and harassment
- Several people advocate passage of Senator Barak Obama's "deceptive practices" bill
- There is a split on whether it would be helpful to have nonpartisan election officials – some indicated they thought even if elections officials are elected nonpartisanly they will carry out their duties in biased ways nonetheless. However, most agree that elections officials pursuing partisan agendas is a problem that must be addressed in some fashion. Suggestions included moving

election responsibilities out of the secretary of states' office; increasing transparency in the process; and enacting conflict of interest rules.

- A few recommend returning to allowing use of absentee ballots "for cause" only if it were politically feasible.
- A few recommend enacting a national identification card, including Pat Rogers, an attorney in New Mexico, and Jason Torchinsky from ACVR, who advocates the scheme contemplated in the Carter-Baker Commission Report.
- A couple of interviewees indicated the need for clear standards for the distribution of voting machines

**List of Experts Interviewed**

Wade Henderson, Executive Director, Leadership Conference for Civil Rights

Wendy Weiser, Deputy Director, Democracy Program, The Brennan Center

William Groth, attorney for the plaintiffs in the Indiana voter identification litigation

Lori Minnite, Barnard College, Columbia University

Neil Bradley, ACLU Voting Rights Project

Nina Perales, Counsel, Mexican American Legal Defense and Education Fund

Pat Rogers, attorney, New Mexico

Rebecca Vigil-Giron, Secretary of State, New Mexico

Sarah Ball Johnson, Executive Director of the State Board of Elections, Kentucky

Stephen Ansolobhere, Massachusetts Institute of Technology

Chandler Davidson, Rice University

Tracey Campbell, author, *Deliver the Vote*

Douglas Webber, Assistant Attorney General, Indiana, (defendant in the Indiana voter identification litigation)

Heather Dawn Thompson, Director of Government Relations, National Congress of American Indians

Jason Torchinsky, Assistant General Counsel, American Center for Voting Rights

Robin DeJarnette, Executive Director, American Center for Voting Rights

Joseph Rich, former Director of the Voting Section, Civil Rights Division, U.S. Department of Justice

Joseph Sandler, Counsel to the Democratic National Committee

John Ravitz, Executive Director, New York City Board of Elections

John Tanner, Director, Voting Section, Civil Rights Division, U.S. Department of Justice

Kevin Kennedy, Executive Director of the State Board of Elections, Wisconsin

Evelyn Stratton, Justice, Supreme Court of Ohio

Tony Sirvello, Executive Director, International Association of  
Clerks, Records, Election Officials and Treasurers

Harry Van Sickle, Commissioner of Elections, Pennsylvania

Craig Donsanto, Director, Public Integrity Section, U.S. Department of Justice

Sharon Priest, former Secretary of State, Arkansas

## **Nexis Articles Analysis**

Note: The search terms used were ones agreed upon by both Job Serebrov and Tova Wang and are available upon request. A more systematic, numerical analysis of the data contained in the Nexis charts is currently being undertaken. What follows is an overview.

Recommendation: In phase 2, consultants should conduct a Nexis search that specifically attempts to follow up on the cases for which no resolution is evident from this particular initial search.

## **Overview of the Articles**

### *Absentee Ballots*

According to press reports, absentee ballots are abused in a variety of ways:

1. Campaign workers, candidates and others coerce the voting choices of vulnerable populations, usually elderly voters
2. Workers for groups and individuals have attempted to vote absentee in the names of the deceased
3. Workers for groups, campaign workers and individuals have attempted to forge the names of other voters on absentee ballot requests and absentee ballots and thus vote multiple times

It is unclear how often actual convictions result from these activities (a handful of articles indicate convictions and guilty pleas), but this is an area in which there have been a substantial number of official investigations and actual charges filed, according to news reports where such information is available. A few of the allegations became part of civil court proceedings contesting the outcome of the election.

While absentee fraud allegations turn up throughout the country, a few states have had several such cases. Especially of note are Indiana, New Jersey, South Dakota, and most particularly, Texas. Interestingly, there were no articles regarding Oregon, where the entire system is vote by mail.

### *Voter Registration Fraud*

According to press reports, the following types of allegations of voter registration fraud are most common:

1. Registering in the name of dead people
2. Fake names and other information on voter registration forms
3. Illegitimate addresses used on voter registration forms
4. Voters being tricked into registering for a particular party under false pretenses

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5. Destruction of voter registration forms depending on the party the voter registered with

There was only one self evident instance of a noncitizen registering to vote. Many of the instances reported on included official investigations and charges filed, but few actual convictions, at least from the news reporting. There have been multiple reports of registration fraud in California, Colorado, Florida, Missouri, New York, North Carolina, Ohio, South Dakota and Wisconsin.

*Voter Intimidation and Suppression*

This is the area which had the most articles in part because there were so many allegations of intimidation and suppression during the 2004 election. Most of these remained allegations and no criminal investigation or prosecution ensued. Some of the cases did end up in civil litigation.

This is not to say that these alleged activities were confined to 2004 – there were several allegations made during every year studied. Most notable were the high number of allegations of voter intimidation and harassment reported during the 2003 Philadelphia mayoral race.

A very high number of the articles were about the issue of challenges to voters' registration status and challengers at the polling places. There were many allegations that planned challenge activities were targeted at minority communities. Some of the challenges were concentrated in immigrant communities.

However, the tactics alleged varied greatly. The types of activities discussed also include the following:

- Photographing or videotaping voters coming out of polling places.
- Improper demands for identification
- Poll watchers harassing voters
- Poll workers being hostile to or aggressively challenging voters
- Disproportionate police presence
- Poll watchers wearing clothes with messages that seemed intended to intimidate
- Insufficient voting machines and unmanageably long lines

Although the incidents reported on occurred everywhere, not surprisingly, many came from "battleground" states. There were several such reports out of Florida, Ohio and Pennsylvania.

*"Dead Voters and Multiple Voting"*

There were a high number of articles about people voting in the names of the dead and voting more than once. Many of these articles were marked by allegations of big numbers of people committing these frauds, and relatively few of these allegations

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turning out to be accurate according to investigations by the newspapers themselves, elections officials and criminal investigators. Often the problem turned out to be a result of administrative error, poll workers mis-marking of voter lists, a flawed registration list and/or errors made in the attempt to match names of voters on the list with the names of the people who voted. In a good number of cases, there were allegations that charges of double voting by political leaders were an effort to scare people away from the voting process.

Nonetheless there were a few cases of people actually being charged and/or convicted for these kinds of activities. Most of the cases involved a person voting both by absentee ballot and in person. A few instances involved people voting both during early voting and on Election Day, which calls into question the proper marking and maintenance of the voting lists. In many instances, the person charged claimed not to have voted twice on purpose. A very small handful of cases involved a voter voting in more than one county and there was one substantiated case involving a person voting in more than one state. Other instances in which such efforts were alleged were disproved by officials.

In the case of voting in the name of a dead person, the problem lay in the voter registration list not being properly maintained, i.e. the person was still on the registration list as eligible to vote, and a person taking criminal advantage of that. In total, the San Francisco Chronicle found 5 such cases in March 2004; the AP cited a newspaper analysis of five such persons in an Indiana primary in May 2004; and a senate committee found two people to have voted in the names of the dead in 2005.

As usual, there were a disproportionate number of such articles coming out of Florida. Notably, there were three articles out of Oregon, which has one hundred percent vote-by-mail.

### *Vote Buying*

There were a surprising number of articles about vote buying cases. A few of these instances involved long-time investigations in three particular jurisdictions as detailed in the vote buying summary. There were more official investigations, indictments and convictions/pleas in this area. All of these cases are concentrated in the Midwest and South.

### *Deceptive Practices*

In 2004 there were numerous reports of intentional disinformation about voting eligibility and the voting process meant to confuse voters about their rights and when and where to vote. Misinformation came in the form of flyers, phone calls, letters, and even people going door to door. Many of the efforts were reportedly targeted at minority communities. A disproportionate number of them came from key battleground states, particularly Florida, Ohio, and Pennsylvania. From the news reports found, only one of these instances was officially investigated, the case in Oregon involving the destruction

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of voter registration forms. There were no reports of prosecutions or any other legal proceeding.

### *Non-citizen Voting*

There were surprisingly few articles regarding noncitizen registration and voting – just seven all together, in seven different states across the country. They were also evenly split between allegations of noncitizens registering and noncitizens voting. In one case charges were filed against ten individuals. In one case a judge in a civil suit found there was illegal noncitizen voting. Three instances prompted official investigations. Two cases, from this nexis search, remained just allegations of noncitizen voting.

### *Felon Voting*

Although there were only thirteen cases of felon voting, some of them involved large numbers of voters. Most notably, of course, are the cases that came to light in the Washington gubernatorial election contest (see Washington summary) and in Wisconsin (see Wisconsin summary). In several states, the main problem has the large number of ineligible felons that remained on the voting list.

### *Election Official Fraud*

In most of the cases in which fraud by elections officials is suspected or alleged, it is difficult to determine whether it is incompetence or a crime. There are several cases of ballots gone missing, ballots unaccounted for and ballots ending up in a worker's possession. In two cases workers were said to have changed peoples' votes. The one instance in which widespread ballot box stuffing by elections workers was alleged was in Washington State. The judge in the civil trial of that election contest did not find that elections workers had committed fraud. Four of the cases are from Texas.

**Rough Summary of Department of Justice, Public Integrity Section Activities,  
October 2002-January 2006\***

Prosecutions and Convictions-- Individuals

Noncitizen voting: 20

Vote buying: 49

Double voting: 12

Registration fraud: 13

Civil Rights: 4

Voter Intimidation: 2

Unclear: 1

Open Investigations (note: a few cases overlap with prosecutions and convictions)

Noncitizen voting: 3

Vote buying: 25

Double voting: 15

Registration fraud: 29

Absentee ballot fraud: 9

Official: 8

Ineligibles: 4

Deceptive Practices: 1

Civil Rights: 14

Intimidation: 6

Other: 2

Cases and Investigations Closed for Lack of Evidence

Civil Rights: 8

Official: 12

Registration Fraud: 12

Absentee Ballot Fraud: 14

Ineligible Voting: 3

Intimidation: 8

Double Voting: 5

Ballot Box Stuffing: 1

Vote Buying: 14

Ballot/machine tampering: 2

Other: 8

Unclear: 3

\*Based upon information available as of January 2006

## **Case Summaries**

After reviewing over 40,000 cases, the majority of which came from appeals courts, I have found comparatively very few which are applicable to this study. Of those that are applicable, no apparent thematic pattern emerges. However, it seems that the greatest areas of fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility. But because so few cases provided a picture of these current problems, I suggest that case research for the second phase of this project concentrate on state trial-level decisions.

*Job Serebrov*

*May 2006*

**Determining a Methodology for Measuring Voter Fraud and Intimidation:  
Recommendations of Political Scientists**

The following is a summary of interviews conducted with a number of political scientists and experts in the field as to how one might undertake a comprehensive examination of voter fraud and intimidation. A list of the individuals interviewed and their ideas are available, and all of the individuals welcome any further questions or explanations of their recommended procedures.

- 1) In analyzing instances of alleged fraud and intimidation, we should look to criminology as a model. In criminology, experts use two sources: the Uniform Crime Reports, which are all reports made to the police, and the Victimization Survey, which asks the general public whether a particular incident has happened to them. After surveying what the most common allegations are, we should conduct a survey of the general public that ask whether they have committed certain acts or been subjected to any incidents of fraud or intimidation. This would require using a very large sample, and we would need to employ the services of an expert in survey data collection. (Stephen Ansolobehere, MIT)
- 2) Several political scientists with expertise in these types of studies recommended a methodology that includes interviews, focus groups, and a limited survey. In determining who to interview and where the focus groups should be drawn from, they recommend the following procedure:
  - Pick a number of places that have historically had many reports of fraud and/or intimidation; from that pool pick 10 that are geographically and demographically diverse, and have had a diversity of problems
  - Pick a number of places that have not had many reports of fraud and/or intimidation; from that pool pick 10 places that match the geographic and demographic make-up of the previous ten above (and, if possible, have comparable elections practices)
  - Assess the resulting overall reports and impressions resulting from these interviews and focus groups, and examine comparisons and differences among the states and what may give rise to them.

In conducting a survey of elections officials, district attorneys, district election officers, they recommend that:

- The survey sample be large in order to be able to get the necessary subsets
- The survey must include a random set of counties where there have and have not been a large number of allegations

(Allan Lichtman, American University; Thad Hall, University of Utah; Bernard Grofman, UC – Irvine)

- 3) Another political scientist recommended employing a methodology that relies on qualitative data drawn from in-depth interviews with key critics and experts on all sides of the debate on fraud; quantitative data collected through a survey of state and local elections and law enforcement officials; and case studies. Case studies should focus on the five or ten states, regions or cities where there has been a history of election fraud to examine past and present problems. The survey should be mailed to each state's attorney general and secretary of state, each county district attorney's office and each county board of elections in the 50 states. (Lorraine Minnite, Barnard College)
- 4) The research should be a two-step process. Using LexisNexis and other research tools, a search should be conducted of news media accounts over the past decade. Second, interviews with a systematic sample of election officials nationwide and in selected states should be conducted. (Chandler Davidson, Rice University)
- 5) One expert in the field posits that we can never come up with a number that accurately represents either the incidence of fraud or the incidence of voter intimidation. Therefore, the better approach is to do an assessment of what is most likely to happen, what election violations are most likely to be committed – in other words, a risk analysis. This would include an analysis of what it would actually take to commit various acts, e.g. the cost/benefit of each kind of violation. From there we could rank the likely prevalence of each type of activity and examine what measures are or could be effective in combating them. (Wendy Weiser, Brennan Center of New York University)
- 6) Replicate a study in the United States done abroad by Susan Hyde of the University of California- San Diego examining the impact of impartial poll site observers on the incidence of election fraud. Doing this retrospectively would require the following steps:
  - Find out where there were federal observers
  - Get precinct level voting information for those places
  - Analyze whether there was any difference in election outcomes in those places with and without observers, and whether any of these results seem anomalous.

Despite the tremendous differences in the political landscapes of the countries examined by Hyde in previous studies and the U.S., Hyde believes this study could be effectively replicated in this country by sending observers to a random sample of precincts. Rather than compare the incumbent's vote share, such factors such as voter complaints, voter turnout, number of provisional ballots used, composition of the electorate, as well as any anomalous voting results could be compared between sites with and without monitors.

For example, if intimidation is occurring, and if reputable monitors make intimidation less likely or voters more confident, then turnout should be higher on average in monitored precincts than in unmonitored precincts. If polling station officials are intentionally refusing to issue provisional ballots, and the polling station officials are

more likely to adhere to regulations while being monitored, the average number of provisional ballots should be higher in monitored precincts than in unmonitored precincts. If monitors cause polling station officials to adhere more closely to regulations, then there should be fewer complaints (in general) about monitored than unmonitored precincts (this could also be reversed if monitors made voters more likely to complain).

Again, random assignment controls for all of the other factors that otherwise influence these variables.

One of the downsides of this approach is it does not get at some forms of fraud, e.g. absentee ballot fraud; those would have to be analyzed separately

7) Another political scientist recommends conducting an analysis of vote fraud claims and purging of registration rolls by list matching. Allegations of illegal voting often are based on matching of names and birth dates. Alleged instances of double voting are based on matching the names and birth dates of persons found on voting records. Allegations of ineligible felon (depending on state law), deceased, and of non-citizen voting are based on matching lists of names, birth dates, and sometimes addresses of such people against a voting records. Anyone with basic relational database skills can perform such matching in a matter of minutes.

However, there are a number of pitfalls for the unwary that can lead to grossly over-estimating the number of fraudulent votes, such as missing or ignored middle names and suffixes or matching on missing birth dates. Furthermore, there is a surprising statistical fact that a group of about three hundred people with the same first and last name are almost assured to share the exact same birth date, including year. In a large state, it is not uncommon for hundreds of Robert Smiths (and other common names) to have voted. Thus, allegations of vote fraud or purging of voter registration rolls by list matching almost assuredly will find a large proportion of false positives: people who voted legally or are registered to vote legally.

Statistics can be rigorously applied to determine how many names would be expected to be matched by chance. A simulation approach is best applied here: randomly assign a birth date to an arbitrary number of people and observe how many match within the list or across lists. The simulation is repeated many times to average out the variation due to chance. The results can then be matched back to actual voting records and purge lists, for example, in the hotly contested states of Ohio or Florida, or in states with Election Day registration where there are concerns that easy access to voting permits double voting. This analysis will rigorously identify the magnitude alleged voter fraud, and may very well find instances of alleged fraud that exceed what might have otherwise happened by chance.

This same political scientist also recommends another way to examine the problem: look at statistics on provisional voting: the number cast might provide indications of intimidation (people being challenged at the polls) and the number of those not counted

would be indications of "vote fraud." One could look at those jurisdictions in the Election Day Survey with a disproportionate number of provisional ballots cast and cross reference it with demographics and number of provisional ballots discarded. (Michael McDonald, George Mason University)

- 8) Spencer Overton, in a forthcoming law review article entitled *Voter Identification*, suggests a methodology that employs three approaches— investigations of voter fraud, random surveys of voters who purported to vote, and an examination of death rolls provide a better understanding of the frequency of fraud. He says all three approaches have strengths and weaknesses, and thus the best studies would employ all three to assess the extent of voter fraud. An excerpt follows:

1. *Investigations and Prosecutions of Voter Fraud*

Policymakers should develop databases that record all investigations, allegations, charges, trials, convictions, acquittals, and plea bargains regarding voter fraud. Existing studies are incomplete but provide some insight. For example, a statewide survey of each of Ohio's 88 county boards of elections found only four instances of ineligible persons attempting to vote out of a total of 9,078,728 votes cast in the state's 2002 and 2004 general elections. This is a fraud rate of 0.00000045 percent. The Carter-Baker Commission's Report noted that since October 2002, federal officials had charged 89 individuals with casting multiple votes, providing false information about their felon status, buying votes, submitting false voter registration information, and voting improperly as a non-citizen. Examined in the context of the 196,139,871 ballots cast between October 2002 and August 2005, this represents a fraud rate of 0.0000005 percent (note also that not all of the activities charged would have been prevented by a photo identification requirement).

A more comprehensive study should distinguish voter fraud that could be prevented by a photo identification requirement from other types of fraud — such as absentee voting and stuffing ballot boxes — and obtain statistics on the factors that led law enforcement to prosecute fraud. The study would demand significant resources because it would require that researchers interview and pour over the records of local district attorneys and election boards.

Hard data on investigations, allegations, charges, pleas, and prosecutions is important because it quantifies the amount of fraud officials detect. Even if prosecutors vigorously pursue voter fraud, however, the number of fraud cases charged probably does not capture the total amount of voter fraud. Information on official investigations, charges, and prosecutions should be supplemented by surveys of voters and a comparison of voting rolls to death rolls.

2. *Random Surveys of Voters*

Random surveys could give insight about the percentage of votes cast fraudulently. For example, political scientists could contact a statistically representative sampling of 1,000 people who purportedly voted at the polls in the last election, ask them if they actually voted, and confirm the percentage who are valid voters. Researchers should conduct the survey soon after an election to locate as many legitimate voters as possible with fresh memories.

Because many respondents would perceive voting as a social good, some who did not vote might claim that they did, which may underestimate the extent of fraud. A surveyor might mitigate this skew through the framing of the question ("I've got a record that you voted. Is that true?").

Further, some voters will not be located by researchers and others will refuse to talk to researchers. Photo identification proponents might construe these non-respondents as improper registrations that were used to commit voter fraud.

Instead of surveying all voters to determine the amount of fraud, researchers might reduce the margin of error by focusing on a random sampling of voters who signed affidavits in the three states that request photo identification but also allow voters to establish their identity through affidavit—Florida, Louisiana, and South Dakota. In South Dakota, for example, only two percent of voters signed affidavits to establish their identity. If the survey indicates that 95 percent of those who signed affidavits are legitimate voters (and the other 5 percent were shown to be either fraudulent or were non-responsive), this suggests that voter fraud accounts for, at the maximum, 0.1 percent of ballots cast.

The affidavit study, however, is limited to three states, and it is unclear whether this sample is representative of other states (the difficulty may be magnified in Louisiana in the aftermath of Hurricane Katrina's displacement of hundreds of thousands of voters). Further, the affidavit study reveals information about the amount of fraud in a photo identification state with an affidavit exception—more voter fraud may exist in a state that does not request photo identification.

### *3. Examining Death Rolls*

A comparison of death rolls to voting rolls might also provide an estimate of fraud.

Imagine that one million people live in state A, which has no documentary identification requirement. Death records show that 20,000 people passed away in state A in 2003. A cross-referencing of this list to the voter rolls shows that 10,000 of those who died were registered voters, and these names remained on the voter rolls during the November 2004 election. Researchers would look at what percentage of the 10,000 dead-but-registered people who "voted" in the November 2004 election. A researcher should distinguish the votes cast in the name of the dead at the polls from those cast



absentee (which a photo identification requirement would not prevent). This number would be extrapolated to the electorate as a whole.

This methodology also has its strengths and weaknesses. If fraudulent voters target the dead, the study might overestimate the fraud that exists among living voters (although a low incidence of fraud among deceased voters might suggest that fraud among all voters is low). The appearance of fraud also might be inflated by false positives produced by a computer match of different people with the same name. Photo identification advocates would likely assert that the rate of voter fraud could be higher among fictitious names registered, and that the death record survey would not capture that type of fraud because fictitious names registered would not show up in the death records. Nevertheless, this study, combined with the other two, would provide important insight into the magnitude of fraud likely to exist in the absence of a photo identification requirement.



**U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005**

May 12, 2006

**MEMORANDUM**

**TO:** EAC Commissioners

**FROM:** Peggy Sims, Election Research Specialist *PS*

**SUBJECT:** Voting Fraud-Voter Intimidation Working Group Meeting

The first meeting of the Voting Fraud-Voter Intimidation Working Group will take place from 1:00 PM to 5:30 PM on Thursday, May 18th, 2006 at the offices of the U.S. Election Assistance Commission (EAC), 1225 New York Avenue, NW, 11<sup>th</sup> Floor, Washington, DC.

As you know, Section 241 of the Help America Vote Act of 2002 (HAVA) requires EAC to conduct research on election administration issues. Among the tasks listed in the statute is the development of:

- nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [section 241(b)(6)]; and
- ways of identifying, deterring, and investigating methods of voter intimidation [section 241(b)(7)].

EAC's Board of Advisors recommended that the agency make research on these matters a high priority. Consequently, in September 2005, EAC contracted with two consultants (Job Serebrov and Tova Wang) to:

- develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections;
- perform background research (including Federal and State administrative and case law review), identify current activities of key government agencies, civic and advocacy organizations regarding these topics, and deliver a summary of this research and all source documentation;

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- establish a project working group, in consultation with EAC, composed of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation;
- provide the description of what constitutes voting fraud and voter intimidation and the results of the preliminary research to the working group, and convene the working group to discuss potential avenues for future EAC research on this topic; and
- produce a report to EAC summarizing the findings of the preliminary research effort and working group deliberations that includes recommendations for future research, if any;

For your information, the folder accompanying this letter includes a number of items related to our consultants' preliminary research and the upcoming meeting:

- a meeting agenda;
- a list of Working Group members;
- a draft definition of election fraud;
- a list of reports and literature reviewed;
- a summary of interviews conducted and a list of experts interviewed;
- a list of experts interviewed;
- an analysis of news articles researched through Nexis;
- a summary of Department of Justice, Public Integrity Section cases, October 2002-January 2006;
- an analysis of case law review;
- a summary of research methodology recommendations from political scientists and experts in the field; and
- a CD with summaries of individual reports and literature reviewed, summaries of individual interviews, charts and summaries of news articles, and case law summary charts.

Please let me know if you have any questions.

Enclosures

cc: Tom Wilkey, Executive Director  
Julie Thompson-Hodgkins, General Counsel  
Gavin Gilmour, Associate General Counsel

# **CHARTER OF THE U.S. ELECTION ASSISTANCE COMMISSION STANDARDS BOARD**

## ***Official Designation: Election Assistance Commission Standards Board***

The U.S. Election Assistance Commission (EAC) hereby Charters the Standards Board established in title II section 211 of the Help America Vote Act of 2002 (HAVA) [Public Law 107-252] pursuant to the Federal Advisory Committee Act.

### **OBJECTIVES AND DUTIES**

1. The objective of the Standards Board (the Board) is to advise the EAC through review of the voluntary voting systems guidelines (VVSG) described in title II Part 3 of the HAVA when the EAC proposes updates to the VVSG; through review of the voluntary guidance described under title III of HAVA; and through the review of the best practices recommendations contained in the report submitted under Section 242(b) of title II of HAVA.

2. The Board will function solely as an advisory body and will comply fully with the provisions of the Federal Advisory Committee Act.

### **MEMBERSHIP**

1. The Board shall consist of 110 members. Fifty-five members shall be State election officials selected by the chief State election official of each State. Fifty-five shall be local election officials selected under a process supervised by the chief election official of the State. The two members of the Standards Board who represent the same State may not be members of the same political party. (HAVA

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title II section 213 (a)). Vacancy appointments shall be made in the same manner as the original appointments.

2. The Board shall select nine of its members as an Executive Board of whom, not more than five may be State election officials; not more than five may be local election officials; and not more than five may be members of the same political party. Members of the Executive Board shall serve two year terms and may not serve more than three consecutive terms. Of the initial Executive Board, three members shall serve for one term; three shall serve for two consecutive terms; and three shall serve for three consecutive terms, as determined by lot at the time the members are first appointed (HAVA title II, section 213 (c)).

#### **ADMINISTRATIVE PROVISIONS**

1. The Board will report to the EAC through the Advisory Committee Management Officer pursuant to 5 U.S.C. App.1 section 8 (b). This officer shall be a member of the EAC staff designated by the Chairman of the EAC.

2. The Board will meet as necessary to carry out the functions, duties and responsibilities of the Standards Board and not less frequently than once every two years for purposes of selecting the Executive Board. Additional meetings may be called at such other times as it considers appropriate for the purposes of conducting other business as it considers appropriate consistent with title II of HAVA. (HAVA title II, section 215 (a)(2)).

3. The EAC will provide clerical and other necessary support services to the Board. (HAVA title II, section 215 (d)).

4. Members of the Board will not be compensated for their services but will be reimbursed for travel expenses and subsistence. (HAVA title II section 215 (e)).

5. The Board may use the United States mails in the same manner and under the same conditions as a department or agency of the Federal Government. (HAVA title II, section 215 (c)).

6. The annual cost for operating the Board is estimated at \$352,256.00 which includes one quarter staff year for support services.

7. The Board may establish such committees of its members as may be necessary subject to the provisions of the law.

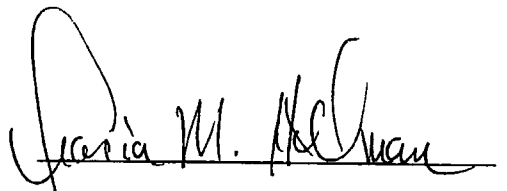
8. The Board may, by simple majority vote, adopt resolutions and make recommendations. Such resolutions and recommendations will, however, be only advisory to the EAC and will be restricted to the EAC's activities described in title II section 212 of the Help America Vote Act of 2002.

9. The EAC will provide liaison services between the Board and the Advisory Panel Secretariat as required by the Federal Advisory Committee Act.

#### DURATION

While the duration of the Board is continuing, the Charter shall be renewed every two years from the date of the filing.

8 July 2006  
Date

  
Gracia M. Hillman, Commissioner

U.S. Election Assistance Commission

[Billing Code 6820- KF]

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## **CHARTER OF THE U.S. ELECTION ASSISTANCE COMMISSION BOARD OF ADVISORS**

The U.S. Election Assistance Commission (EAC) hereby Charters the Board of Advisors established in title II section 211 of the Help America Vote Act of 2002 (HAVA) [Public Law 107-252] pursuant to the Federal Advisory Committee Act.

### **OBJECTIVES AND DUTIES**

1. The objective of the Board of Advisors (the Board) is to advise the EAC through review of the voluntary voting systems guidelines described in title II Part 3 of the HAVA; through review of the voluntary guidance described under title III of HAVA; and through the review of the best practices recommendations contained in the report submitted under Section 242(b) of title II (HAVA title II section 212).

2. The Board will function solely as an advisory body and will comply fully with the provisions of the Federal Advisory Committee Act.

### **MEMBERSHIP**

1. The Board shall consist of the following:

- Two members appointed by the National Governors Association.
- Two members appointed by the National Conference of State Legislatures.
- Two members appointed by the National Association

of Secretaries of State.

- Two members appointed by the National Association of State Election Directors.
- Two members appointed by the National Association of Counties.
- Two members appointed by the National Association of County Recorders, Election Administrators, and Clerks.
- Two members appointed by the United States Conference of Mayors.
- Two members appointed by the Election Center.
- Two members appointed by the International Association of County Recorders, Election Officials, and Treasurers.
- Two members appointed by the United States Commission on Civil Rights.
- Two members appointed by the Architectural and Transportation Barrier Compliance Board under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792).
- The chief of the Office of Public Integrity of the Department of Justice, or the chief's designee.
- The Chief of the Voting Section of the Civil Rights Division of the Department of Justice or the chief's designee.
- The director of the Federal Voting Assistance Program of the Department of Defense.
- Four members representing professionals in the field of science and technology, of whom—
  - (A) one each shall be appointed by the Speaker and the Minority Leader of the House of Representatives; and
  - (B) one each shall be appointed by the Majority Leader and the Minority Leader of the Senate.
- Eight members representing voter interests, of whom—



(A) four members shall be appointed by the Committee on House Administration of the House of Representatives, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member; and  
(B) four members shall be appointed by the Committee on Rules and Administration of the Senate, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member. (HAVA title II section 214 (a)).

2. Vacancy appointments shall be made in the same manner as the original appointments.

3. Members of the Board shall serve for a term of 2 years and may be reappointed.

4. The Board shall elect a Chair from among its members.

#### **ADMINISTRATIVE PROVISIONS**

1. The Board will report to the EAC through the Advisory Committee Management Officer pursuant to 5 U.S.C. App.1 section 8 (b). This officer shall be an EAC Commissioner designated by the Chairman of the EAC.

2. The Board will meet a minimum of once a year for purposes of voting on the voluntary voting system guidelines. Additional meetings may be called at such other times as it considers appropriate for the purposes of conducting other business as it considers appropriate consistent with title II of HAVA. (HAVA title II, section 215 (a)(2)).

3. The EAC and GAO will provide clerical and other necessary support services to the Board. (HAVA title II, section 215 (d)).

4. Members of the Board will not be compensated for their services but will be reimbursed for travel expenses and subsistence. (HAVA title II section 215 (e)).

5. The Board may use the United States mails in the same manner and under the same conditions as a department or agency of the Federal Government. (HAVA title II, section 215 (c)).

6. The annual cost for operating the Board is estimated at \$100,000 which includes one quarter staff year for support services.

7. The Board may establish such committees of its members as may be necessary subject to the provisions of the law.

8. The Board may, by simple majority vote, adopt resolutions and make recommendations. Such resolutions and recommendations will, however, be only advisory to the EAC and will be restricted to the EAC's activities described in title II section 212 of the Help America Vote Act of 2002.

9. The EAC will provide liaison services between the Board and the Advisory Panel Secretariat as required by the Federal Advisory Committee Act.

#### **DURATION**

This is a permanent committee as established in title II section 215 (f) of the Help America Vote Act of 2002.

**CHARTER OF THE  
U.S. ELECTION ASSISTANCE COMMISSION  
TECHNICAL GUIDELINES  
DEVELOPMENT COMMITTEE**

**ESTABLISHMENT:**

In accordance with the requirements of Section 221 of the Help America Vote Act of 2002 (P. L. 107-252), hereinafter referred to as the Act, the Election Assistance Commission (the "Commission") hereby establishes the Technical Guidelines Development Committee (the "Committee"), pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

**OBJECTIVES AND DUTIES:**

Pursuant to 42 U.S.C. § 15361(b)(1), the Committee will act in the public interest to assist the Executive Director of the Commission in the development of the voluntary voting system guidelines.

**MEMBERS AND CHAIRPERSON:**

Membership: shall be composed of:

1. The Director of the National Institute of Standards and Technology (NIST) who shall serve as its chair.
2. A group of 14 other individuals appointed jointly by the Commission and the Director of NIST, consisting of the following:
  - A. An equal number of each of the following:

Members of the Standards Board,  
Members of the Board of Advisors,  
Members of the Architectural and Transportation Barrier, and  
Compliance Board (Access Board).
  - B. A representative of the American National Standards Institute.
  - C. A representative of the IEEE.
  - D. Two representatives of the NASED selected by such Association who are not members of the Standards Board or Board of Advisors, and who are not of the same political party.
  - E. Other individuals with technical and scientific expertise relating to voting systems and voting equipment.

#### **ADMINISTRATIVE PROVISIONS:**

1. The Committee shall report to the Executive Director of the Commission.
2. Selected staff within NIST's Information Technology Laboratory will provide staff support for the Committee.
3. The Committee shall meet at least three times per year, quarterly. The Chair of the EAC shall call the first meeting of the Committee. Thereafter, the Chair of the EAC or the Chair of the TGDC may call a meeting of the Committee.
4. Members of the Committee shall not be compensated for their services, but will, upon request, be allowed travel and per diem expenses in accordance with 5 U.S.C. 5701 et seq., while attending meetings of the Committee or subcommittees thereof, or while otherwise performing duties at the request of the Chair, while away from their homes or regular places of business.
5. The Committee shall function solely as an advisory body, in accordance with the provisions of the Federal Advisory Committee Act.
6. The annual cost of operating the Committee is estimated at \$2.8 million, including all direct and indirect expenses. It is estimated that six FTE will be required to support the TGDC.
7. The Committee shall not act in the absence of a quorum, which shall consist of a simple majority of the members of the Committee not having a conflict of interest in the matter being considered by the Committee, except that, if the number of members on the Committee is even, half will suffice.
8. The EAC will create any subcommittees of the TGDC that may be necessary to accomplish the TGDC's function. In addition, the EAC will establish such operating procedures as required to support the TGDC, consistent with the Federal Advisory Committee Act, as amended.

#### **DURATION:**

While the duration of the Committee is continuing, the Charter shall be renewed every two years from the date of filing.

#### **CHARTER FILING DATE:**

This Charter was filed on the 23 day of June, 2004.

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